

**AN APPRAISAL OF THE IMPLEMENTATION OF THE UNCCD  
IN AFRICA: CASE STUDY SOUTH AFRICA, CAMEROON,  
KENYA AND MOROCCO**

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Thesis submitted in fulfillment of the requirements for a Master's degree (LLM) in Environmental Law at the University of KwaZulu-Natal, South Africa

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# DECLARATION

**I, SIXTUS MOUGOMBE NAEKE, declare that:**

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As the candidate's Supervisor, I agree to the submission of this dissertation.

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**PROF. MICHAEL KIDD**

## **DEDICATION**

To

God Almighty who protects and keeps me safe.

To

My Mother Sophie Nalova Naeke and my Brother Simon Ngale Naeke of blessed memory, whose love and spiritual guardians kept me going.

To

My uncle and brother George Njoke Naeke in the USA, whose financial support made it possible to realize this work. I thank you.

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## **ABSTRACT**

This dissertation examines the implementation of the United Nations Convention to Combat Desertification and/ or Drought particularly in Africa, (hereinafter referred to as the UNCCD). It reveals that of the 41 per cent of dry land ecosystems which covers the earth surface, about one third of the world's population live in dry land areas, and an estimated 325 million people in Africa also live in these areas being faced with problems such as food insecurity, migration, poor sanitation caused primarily by desertification, land degradation and drought. The dissertation presents an evaluation of regional and sub-regional programmes working in partnership with the Convention to meet its objectives in Africa. The dissertation provides a critical analysis of the national action programmes (NAP) of South Africa, Cameroon, Kenya and Morocco selected as the case studies for this research, representing each of the sub-regions of Africa. In so doing, the dissertation seek to provide a better understanding of the effectiveness of the NAP of the case study countries, using the bottom-up approach required by the Convention, and identifies the gaps through comparing the similarities and differences of the approach of the selected case study countries. Finally, through the consideration of the NAP of the case study countries and other African regional partners facilitating the Conventions implementation, it distils some recommendations as the way forward for the UNCCD effective implementation.

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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background and Orientation of the Research Problem

Environmental problems are diverse in character and international in scope which requires global cooperation and governance in order to address them in a sound and coherent fashion.<sup>1</sup> The adverse effects of environmental degradation especially on land and the loss of plant and animal diversity as a result of human activities and changes in climatic conditions, calls for actions to be taken in order to combat these environmental challenges.<sup>2</sup> Land degradation occurs in all ecosystems and brings serious challenges in those areas severely affected especially in Africa.<sup>3</sup> The dry land ecosystem covers over 41 percent of the earth surface and about one third of the world population live in these areas.<sup>4</sup> As a result of desertification and drought, dry land areas worldwide are faced with rapid and continuous adverse changes which affect animal and plant communities and, the hydrological cycle. This causes a loss in soil properties and leads to a decline in ecosystem services, posing challenges to a sustainable living for humankind.<sup>5</sup> This research is concerned primarily with developments of the United Nations Convention to Combat Desertification in those countries experiencing serious Drought and or Desertification, particularly in Africa and its related Conferences of the Parties till July 2013.

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<sup>1</sup> A. Kiss, D Shelton "International Environmental Law" (1999) at 4.

<sup>2</sup> Ibid at p 5; see P Sands "Principles of International Environmental Law" (1993) at xv.

<sup>3</sup> K. Michaelides "Plants Themselves Degrade Fragile Dry land Ecosystems into Deserts" available at <http://www.azocleantech.com/news.aspx?newsID=17542>, (accessed on November 8, 2012) 44.

<sup>4</sup> Ibid.

<sup>5</sup> P. D' Odorico, A Bhattachan, K. F. Davis et al. "Global desertification: Drivers and feedbacks" available at <http://www.elsevier.com/locate/advwatres> (accessed on October 5th, 2012).

## 1.2 Desertification and Drought

The Convention (UNCCD)<sup>6</sup> defines desertification as “land degradation in arid, semi-arid and sub-humid areas resulting from various factors, including climatic variations and human activities”. Furthermore, according to the Convention, land degradation in the arid, semi-arid and dry sub-humid regions refers to the loss or the reduction of economic or biological productivity of forest, woodlands, and crop lands, pastures and rain fed crop land, through combined processes which include: habitation patterns and human activities manifested in various ways. This could take the forms of erosion either by wind or water, deforestation, the physical or biological deterioration of the chemical or economic soil properties.<sup>7</sup>

Desertification also occurs when desert-like conditions begins to expand predominantly in areas which have over time experienced soil disturbance by human activities like deforestation, poor agricultural techniques, and overgrazing among others.<sup>8</sup> Desertification is closely associated with drought, with each directly or indirectly influencing the other. Drought refers to a period with an extended deficiency of water availability, relative to the statistics of water condition of the area calculated per annum.<sup>9</sup> Desertification and or drought pose a threat to the sustainability of livelihoods of human’s plants and animals particularly in Africa where the Convention is primarily focused,<sup>10</sup> for many reasons. According to the United Nations Millennium Assessment of the Ecosystem,<sup>11</sup> which is considered to be the most global agreement reached on a consensus on the issue of desertification, about two billion people live in dry land areas with over 325 million in Africa<sup>12</sup> threatened directly by desertification and or drought.<sup>13</sup> The effects of desertification and drought particularly in Africa, have contributed enormously to the series of socio-economic problems the region is faced with.

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<sup>6</sup> Article 2 of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and / or Desertification, Particularly in Africa (hereafter referred as the UNCCD) available at <http://www.unccd.int> (accessed on November 9, 2012).

<sup>7</sup> Ibid article 1(f).

<sup>8</sup> L Klappenbach “What is Desertification” available at <http://www.animals:about.com> (accessed on September 16, 2012).

<sup>9</sup> H. N. Le Houerou “Climate Change, drought and desertification” (1996) vol. 34 *Journal of Arid Environments* 12.

<sup>10</sup> See the full Title of the UNCCD (note 6) above.

<sup>11</sup> The Millennium Ecosystem Assessment, available at <http://www.maweb.org> (accessed on October 26, 2012).

<sup>12</sup> See U.N. Doc. A/Conf.199/Pc/16 (hereinafter referred as the U.N. Commission on Sustainable Development, a presentation from Niger’s Permanent Representative) April 15 2002.

<sup>13</sup> Ibid.

### 1.3 Why Desertification and Drought Are a Problem to Africa

Desertification and drought are a problem in Africa for so many reasons. These include, but are not limited to, food insecurity due to poor agricultural productivity caused by desertification, migration<sup>14</sup> and health issues such as malnutrition among others. According to UNEP, the world is currently faced with an ever growing population, climate change, and pressures on arable land and scarce natural resources, which could be a potential for an increase in conflicts within the continent.<sup>15</sup> With regards to the causes of desertification, both anthropogenic and natural factors account for this. Among the human induced factors, population increase has been considered to be exacerbating desertification. According to Darkoh,<sup>16</sup> population increase is one of the main factors that causes desertification in Africa. This is because the increase in population in Africa adds to land pressure for agricultural purposes and settlement and tends to be mismanaged through unsustainable practices.

On the other hand, natural factors such as climatic variation also contribute to the process of desertification.<sup>17</sup> According to Burns,<sup>18</sup> the loss of vegetation cover, exposing the top soil to erosion in dryland areas in Africa, is attributed to the ongoing global warming. However, some commentators like Clark<sup>19</sup> are of the opinion that the causes of desertification are linked primarily to deforestation, overgrazing, soil salinization and over cultivation of arable land which are influenced by humans.<sup>20</sup> As a result of the effects of drought and desertification, Africa has

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<sup>14</sup> Migration in this context is in three forms which includes; emigration that is, the movement of people out of a country to another country, rural to rural movement and those moving to urban centres which increases pressure on land.

<sup>15</sup> The United Nations Environmental Programme (UNEP), "From Conflict to Peace building: The Role of Natural Resources and the Environment", at 28 to 29, U.N. Doc. DEP/1079/GE (2009); UNEP, Facing the Facts: Assessing the Vulnerability of Africa's Water Resources to Environmental Change, (hereafter referred to as Facing the Facts) at 2, U.N. Doc. UNEP/DEWA/RS.05-2. (2005).

<sup>16</sup> MBK Darkoh "The causes and consequences of Desertification in the drylands of Africa" (1998) *vol. 1-20 Journal of Land Degradation and Development* 62

<sup>17</sup> William C. Burns "The International Convention to Combat Desertification: *Drawing a Line in the Sand*" (1995) *Journal of International Law* 38.

<sup>18</sup> Burns *ibid*.

<sup>19</sup> Leslie C. Clark " A Call to Restructure Existing International Environmental Law in Light of Africa's Renaissance: The United Nations Convention to Combat Desertification and the New Partnership for Africa's Development (NEPAD) *Seattle University Law Review Vol 525, 2003-2004* 56.

<sup>20</sup> *Ibid* at p. 8.

been projected as a region expected to be faced with poor agricultural productivity that will lead to ‘food insecurity and risk to human health due to land degradation’.<sup>21</sup> Moreso, many African countries have suffered from severe drought caused primarily by shortages in water supply.

Kenya, Ethiopia, and Somalia for instance, are expected to be faced with droughts by the year 2025<sup>22</sup> if immediate action is not taken. Also, because most economies in Africa rely on agriculture and with the demand for water for agricultural production increasing, it becomes more problematic to meet this water demand as a result of the effects of droughts in the region.<sup>23</sup> Therefore the effect of drought had led to the loss of human lives, livestock and low crop yields.<sup>24</sup> Also, drought and desertification have led to the increase in poverty levels within the region.<sup>25</sup> Furthermore, drought and desertification cause serious problems to the health and sanitation of the population of Africa. Access to safe drinking water<sup>26</sup> is of serious concern because the majority of the population do not have easy access to water which is a source of life.<sup>27</sup> Only a cross-section of urban dwellers, have easy access to good drinking water, while the majority of those in the rural areas still have difficulties in accessing this important commodity.<sup>28</sup> Due to the adverse effects of drought and desertification, and also considering the generally accepted fact that soil is of vital importance for agricultural productivity and ecosystem

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<sup>21</sup> M.Boko et al. “UNFCCC, Climate Change Impacts, Vulnerabilities and Adaptation in Developing Countries” (2007) at 791, available at <http://www.unfccc.int/resource/docs/publications/impacts.pdf> (accessed on October 26, 2012).

<sup>22</sup> UNEP Facing the Facts (note 14) above at 20.

<sup>23</sup> The United Nations Framework Convention on Climate Change (hereafter referred as UNFCCC), Physical and Socio- Economic Trends in Climate Related Risks and Extreme Events, and Implications for Sustainable Development, UNFCCC/TP/2008/3 at P. 60, (November 28, 2008).

<sup>24</sup> AQUASTAT, U.N Food and Agricultural Organization (hereinafter referred as FAO), Information System on Water and Agriculture available at <http://www.fao.org/nr/water/aquastat/main/index.stm> (accessed on November 12, 2012).

<sup>25</sup> Ibid. Poverty levels in Ethiopia and Kenya for example stands at 44% and 53% respectively as of the statistics of November 12, 2012.

<sup>26</sup> The definition of safe drinking water by the United Nations High Commissioner for Human Rights, AQUASTAT (note 24) as “Water that does not represent any significant risk to health over a lifetime of consumption and that is free of microbial pathogens, and radiological substances.”

<sup>27</sup> Ibid. A majority of the population especially in the rural areas do not have easy access to safe drinking water which could lead to an ‘unsustainable growth of the population,’ because some people may fall ill and even die as a result of this. For example, in Kenya only about 62% of the population have access to safe drinking water, with over 89% to urban centers and only 46% to the rural areas.

<sup>28</sup> Ibid.

functioning,<sup>29</sup> there is need for a sound implementation of sustainable land management practices in Africa.

In addition to the above, drought and desertification affects the entire region. In West and Central Africa for instance, there have been a series of droughts in countries like Cameroon since the beginning of 2012<sup>30</sup> that have caused severe hunger in the Sahelian regions of the country. Due to the effects of drought and desertification in Cameroon, the prices of staple food stuffs like maize, millet and sorghum have drastically increased making life difficult for many poor people who cannot afford them.<sup>31</sup> As a result of this on-going problem resulting from the effects of drought and desertification in the country, according to the World Food Programme (hereinafter referred as W.F.P), both the North and Far North Regions of Cameroon are in a severe hunger crisis that demands immediate food supply.<sup>32</sup>

Furthermore, even though it is widely claimed that Africa has fertile soils with a formidable work force, the Continent is unable to produce enough food to meet its population's demands. Thus, they still rely on imported food stuffs especially rice which has been rated as the highest importer and consumer of cereals. According to the World Bank Report, estimates shows that about "3.5 billion US dollar is paid annually as bills for importation of food stuffs into Africa".<sup>33</sup>

As contended by Makhtar Diop:

the time has come for making African agriculture and agribusiness a catalyst for ending poverty, we cannot overstate the importance of agriculture to Africa's determination to maintain and boost its high growth rates, create more jobs, significantly reduce poverty, and grow enough cheap, nutritious food to feed its families, export its surplus crops, while safeguarding the Continent's environment.<sup>34</sup>

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<sup>29</sup> E Verster, W. Du Plessis, N.J.J Olivier et al. "Soil" In HA Strydom and King (ed) Fuggle and Rabie's *Environmental Management in South Africa* (2<sup>nd</sup> ed) (2009) Ch 10 at 306.

<sup>30</sup> Ngala Killian Chintom "Drought in Sahel: Affects Urban Cameroonians" available at <http://www.ipsnews.net/2012/02/drought-in-Sahel-affects-urban-Cameroonian> (accessed on November 15, 2012).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid. According to the World Food Programme hereinafter referred as (W.F.P), about 400.000 people in the Sahelian Northern Regions of Cameroon are in serious hunger crisis causing the loss of human lives and livestock's requiring emergency food donation.

<sup>33</sup> See the World Bank: working for a world free of poverty "Africa's Agriculture and Agribusiness Markets Set to Top US One dollar Trillion in 2030" issue 4, March 2013 available at <http://www.worldbank.org/en/news/feature/2013/03/04/africa-agribusiness-report> (accessed on April 3, 2013).

<sup>34</sup> Ibid.

Migration is another challenge which has been caused by land degradation, desertification and drought. As a result, the trend for Africans, especially those south of the Sahara, to migrate to Europe and other parts of the developed world, may increase drastically to about 60 million in 2020<sup>35</sup>

The discussion above shows that land degradation, drought and desertification are of serious concern which require immediate actions by African governments and the civil society to ensure the sustainability of the Continent's growth. Land in Africa as in other developing areas of the world, plays a central role for the provision of a sustainable standard of living. However, despite the fact that Africa's agricultural productivity has declined over the past decades, especially in the Sahel region, and an estimated nine million people continue to rely heavily on food donation from the World Food Program (WFP),<sup>36</sup> African governments are failing to make sustainable land management, a priority in their development agenda.<sup>37</sup> Moreover, the above problems caused by desertification and drought to Africa, calls for international action to combat these phenomena. The discussion that follow in the paragraphs below will present an overview of the UNCCD history and focused areas.

#### **1.4 An Overview of the United Nations Convention to Combat Drought And/ Or Desertification in Those Countries Seriously Affected Particularly in Africa (UNCCD).**

As a result of the effects of drought, desertification and land degradation accounting for environmental, social and economic difficulties facing many countries globally and Africa in

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<sup>35</sup> Inter Press Service: News Agency" Advancing Deserts" available at <http://www.ipnews.net/news/environments/advancing-deserts> (accessed on April 12, 2013).

<sup>36</sup> Statement from the Executive Director of the World Food Programme (hereinafter referred to as WFP) available at <http://www.wfp.org/news/news-release/one-year-sahel-crisis-review-humanitarianresponce> (accessed on April 6, 2013).

<sup>37</sup> Land Policy in Africa: "A framework to strengthen Land Rights, Enhance Productivity and Secure Livelihoods" AUC-ECA-AFDB Consortium (2010) available at <http://www.uneca.org/sites/fault/uploaded-documents/fg-on-land-policy-eng.pdf> (accessed on April 5, 2013).

particular, it became apparent that there was a need for action to be taken to combat these ills which threaten human existence on earth. Against this backdrop, the Convention (UNCOD)<sup>38</sup> adopted a Plan of Action to Combat Desertification (PACD).<sup>39</sup> This was organized in 1977 and was the first ever global attempt to combat desertification.<sup>40</sup> This action and other early attempts which are known to have had limited success, were important due to the fact that they helped in raising global awareness which exposed drought and desertification as serious problems causing land degradation, thus, calling for global action.<sup>41</sup>

The problem of land degradation was brought for discussion to the United Nations Conference on Environment and Development (UNCED)<sup>42</sup> held in Rio in 1992, which aimed at involving the local communities in promoting sustainable development within their respective communities.<sup>43</sup> After the completion of the work of the Intergovernmental Negotiating Committee (INCD) by the United Nations General Assembly (UNGA)<sup>44</sup> in creating a Convention with particular emphasis on Africa, the UNGA adopted Resolution 47/188 which led to the formation of the UNCCD on June 17, 1994 in Paris.<sup>45</sup> The Convention came into force 90 days after it was ratified by fifty member states on December 26, 1996.<sup>46</sup> The Convention has as of the time of writing, 193 parties including the European Union.<sup>47</sup> The Conference of the Parties (COP) of the UNCCD acts as a body governing the activities of the Convention. Also as of the time of writing, the COP has held eleven sessions with the latest held in September 2013 in Windhoek.<sup>48</sup> Among the various Conferences of the Parties which have been held, the most important was the one

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<sup>38</sup> The United Nations Conference on Desertification (hereinafter referred to as UNCOD) held in 1977 and adopted the Plan of Action to Combat Desertification (PACD).

<sup>39</sup> The UNCCD Convention history at <http://www.unccd.int/en.about-theConvention/historypages/default.aspx> (accessed on October 28, 2012).

<sup>40</sup> Ibid. The PACD was built upon a twenty eight recommendations made which aimed at encouraging countries affected by drought to create an emergency fund to compensate losses incurred by victims.

<sup>41</sup> Ibid.

<sup>42</sup> The United Nations Conference on Environment and Development (hereinafter referred as UNCED) held in Rio de Janeiro Brazil in 1992.

<sup>43</sup> See the UNCCD history at (note 32) above.

<sup>44</sup> The United Nations General Assembly (hereinafter UNGA).

<sup>45</sup> See Land Policy in Africa (note 37) above.

<sup>46</sup> The Secretariat of the UNCCD, status of ratification and entry into force at <http://www.unccd.int/convention/ratif/docif.php> (accessed on October 20, 2012).

<sup>47</sup> Ibid, the Convention has as of October 2012, 193 members including the European Union.

<sup>48</sup> List of participants at the eleventh session of the COP to the UNCCD available at <http://www.unccd.int/List?officialDocuments> (accessed on October 28, 2013) about one hundred participants from different member States and over eighty observers were in attendance at the conference.



held in Madrid on September 2007. The reason for this is that, it laid down a ten year strategic plan as from the year 2008 to 2018 which aimed at reinforcing the implementation of the Convention.<sup>49</sup>

The main objective of the Convention is to combat desertification and land degradation and to mitigate the effects of droughts particularly in those countries in Africa severely affected.<sup>50</sup> Regarding the obligations on parties, developed parties are encouraged to provide financial support to fund projects in less developed states aiming at combating desertification and mitigating the impacts of drought.<sup>51</sup> Furthermore, developed countries party to the Convention are obliged to provide access to ‘appropriate technology, knowledge and know-how’<sup>52</sup> while the technology in question must be what the Conventions refers to as ‘socially acceptable’<sup>53</sup> and there is emphasis on the need for parties to “protect, integrate, enhance and validate traditional and local knowledge, know-how and practices”.<sup>54</sup>

However, there are obligations which apply to all parties to the Convention which include but not limited to, that parties are to provide for an all-inclusive approach in combating desertification and mitigate the impact of drought by addressing the biological, physical and the socio-economic characteristics<sup>55</sup> which should be linked to policies aiming at reducing severe poverty.<sup>56</sup> Furthermore, cooperation among states parties to the CCD and to build reliable and efficient regional and sub-regional organizations in combating the phenomena.<sup>57</sup> Moreover, with regards to affected parties particularly where the Convention is focused, they required to create National Action Programmes which give priority to severe poverty eradication, engaging local community inhabitants living in dry land areas in actions aimed at implementing the Convention,

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<sup>49</sup> See UN Res.A/RES/62/195 of 2007, declaring January 2010 to December 2020 the Decade for Deserts and the fight against Desertification. See also for further details on this, [http://www.un.org/en/events/desertification\\_decade/background.shtml](http://www.un.org/en/events/desertification_decade/background.shtml) (accessed on November 18, 2012).

<sup>50</sup> See (note 6) above article 2(1) of the Convention.

<sup>51</sup> See (n6) above article 6a of the Convention.

<sup>52</sup> Ibid article 6e.

<sup>53</sup> Ibid article 18.

<sup>54</sup> Ibid article 17.

<sup>55</sup> Ibid article 4.2a.

<sup>56</sup> Ibid article 4c.

<sup>57</sup> Ibid article 2d, e and f. See also for more on this, V Ask “UNCCD and Food Security for Pastoralists within a Human Rights Context” (DCG Report N0. 43) available at <http://www.eldis.org/vfile/upload/1/document/0708/DC> (accessed on November 20, 2012).

among other obligations. A detail analyses of the UNCCD and its substantive provisions particularly those relating to affected parties in Africa and the Convention's annexure on Africa, will be made in chapter two.

## **1.5 The Scope of the Study**

Given the important role land plays in the sustainability of human kind on earth, and particularly in Africa, it would be useful to evaluate how the UNCCD has been implemented in combating land degradation in four selected African countries.<sup>58</sup> Moreover, the reasons for choosing these four countries are justified in the later section of this chapter under the research question. This is aimed at describing the justification in line with the questions this study aims to answer. This study proposes to critically evaluate the various National Action Plan (NAPs) of these countries representing the various regions of the African continent.

Furthermore, it is aimed at providing an appraisal of the best practice which has been put into place by these selected countries in soundly implementing the Convention. Although it is widely believed that the concept of land degradation is concerned primarily with the scientific analyses of the problem, this study will confine itself to the legal aspects of the issue. It will evaluate the legal actions that have been enacted by these countries which aim at implementing the Convention. It will also analyses the current legal reform, and identify the areas which require legal development.

## **1.6 Research Question**

The key question that this research will consider is the implementation of the UNCCD in Africa. This will involve the consideration of evidence of the extent to which the UNCCD has been implemented, particularly in those countries seriously affected by land degradation, desertification and/or drought in Africa. This will be done through the evaluation of the various National Action Programmes and their related legal mechanisms instituted to implement the

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<sup>58</sup> These countries are: South Africa, Cameroon, Kenya and Morocco.

CDD by those countries that form the case study for this research. In doing this, analysis of the Regional and Sub-regional Action Plans working in partnership with the Convention to facilitate its implementation using the Bottom-Up-Approach adopted by the Convention,<sup>59</sup> will be made. Moreover, answers to this question will be attempted given the realities on the ground leading to land degradation in the selected African countries providing the case studies for this research.

Since space does not permit a study of all countries in Africa, this research focuses on one country within each of the south, east, west and northern African regions seriously affected by desertification and the effects of drought. One of the reasons for choosing these countries as case studies is that, these countries are currently facing severe problems of land degradation. These areas experience a high temperature rise with increasing potential evapo-transpiration (PET) which affects the soil content to support plant growth. In South Africa for instance, statistics show about 86.5%, Kenya 77.2%, Morocco 76.4% and Cameroon 82.6% respectively.<sup>60</sup> Also, both drought and desertification have proven to be serious challenges to the growth and sustainable development in Africa. This has caused heavy burden to its population.<sup>61</sup> In Kenya for instance, about 80 percent of its land is suffering from threats of desertification.<sup>62</sup> Also in South Africa, there is a serious water crisis currently caused by the variation of rainfall among other anthropogenic factors.<sup>63</sup>

## 1.7 Research Methodology

This study employs an archival qualitative research paradigm with no real physical contact with participants. Therefore, it is entirely desktop based. Qualitative research provides greater insight

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<sup>59</sup> The Bottom-Up Approach adopted by the Convention, will be described later on in the course of this study in chapter two under the Convention's analyses.

<sup>60</sup> See Le Houerou et al (note 9) above.

<sup>61</sup> Two-thirds of African land is already degraded to a high degree which affects at least 485 million people or about 65 percent of the entire population "Statement of IFAD and the Global Mechanism of the UNCCD to the 61<sup>st</sup> session of the General Assembly. Available at <http://ruralpovertyportal.org/english/topics/desertification/ifad/speech.htm> (accessed on August 1st, 2012).

<sup>62</sup> Concern Worldwide "Combating Desertification" available at <http://www.concern.net/docs/Debates/Resource/combating20%desertification.pdf>. (Accessed on August 1<sup>st</sup> 2012).

<sup>63</sup> Annual Coefficient of variation of rainfall in South Africa varies from 20% in the more humid eastern parts of the country, to over 40% in the arid west. Source: GG 27952 of August 26, 2005.

through examining the qualities, characteristics or properties of a phenomenon.<sup>64</sup> Therefore, the research will make use of a selected wide range of sources, such as academic books, chapters in books, journals articles, published reports, media reports, published and unpublished theses, working papers, conference papers and internet information. The study will also make use of analyses of Country Reports to the UNCCD secretariat on their progress and difficulties encountered in implementing the Convention.

Furthermore, a critical evaluation of the National Action Plans (NAP) of these focused countries will be attempted. In addition, a visit was made to the Department of Environmental Affairs and Tourism (DEAT) South Africa, to get first-hand information on the country's NAP and other partner organizations working to combat desertification and mitigate the impact of drought. Finally, this study will make use of information from various ministerial organs responsible for the environment and nature protection in Kenya, South Africa, Cameroon and Morocco.

To ensure that the data mentioned above is valid, the study will apply four standards of J A. Scott's data assessment which include;

- Authenticity: that is, whether the evidence gathered for the thesis is genuine and of unquestionable origin or sources;
- Credibility: that is, whether the evidence obtained is typical of its kind or not;
- Representativeness: to find out the extent to which the evidence gathered is free from error and distortion, and whether the documents consulted are representative of the totality of the relevant documents; and
- Meaning: to find out the extent to which the evidence gathered is clear and comprehensible.<sup>65</sup>

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<sup>64</sup> E Henning "Finding Your Way in Qualitative Research" (2004).

<sup>65</sup> J. A Scout "Matters of Record" Cambridge (1990).

## 1.9 Outline of Chapters

**CHAPTER ONE:** of this thesis is introduction to the research. This chapter contains an overview of the problem of desertification and drought. It also presents a brief history of the UNCCD, and explains why land degradation caused by desertification or drought is a problem to Africa especially to the focused countries of this research. This chapter also includes the research questions and the methodologies that are used for this study.

**CHAPTER TWO:** provides analyses of the UNCCD, its objectives and the various mechanisms used by the Convention such as;

- Financial
- Capacity building and enhancing synergy with other environmental instruments like the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) sister organizations emerging from Rio.
- Regional and Sub-Regional partnership instruments like NEPAD, the TerrAfrica Programme and IGAD.

**CHAPTER THREE:** will be dealing with an appraisal of the South African National Action Plan of implementation. This will include among others, the Department of Water and Environmental Affairs formerly (DEAT) as a primary domestic instrument charged with the implementation of the UNCCD and also, earlier government programmes on soil conservation like the Forest and Veld Conservation and the Conservation of Agricultural Resources Act 43 of 1983.

- South Africa's NAPs and instruments to facilitate the Convention's implementation which include:
  - The National Environmental Management Act 107 of 1998.
  - The National Water Act 36 of 1998.
  - The National Forest Act 84 of 1998.
  - The Mineral and Petroleum Resources Development Act 28 of 2002.

**CHAPTER FOUR:** looks at the desertification and drought situation in Cameroon, its NAP which includes measures in resolving the farmer-grazer conflict. The chapter will also assesses the country's Land Tenure, Ownership, the forests protection and the role of women as partners in the fight in combating desertification and mitigate the impacts of drought.

**CHAPTER FIVE:** this chapter looks at the Kenyan NAPs to implement the CCD through the legal, policy and programmes established. The National Environmental Management Authority a framework legislation where other laws aiming at environmental protection take their roots will be investigated. Also, the Kenyan new Constitution provisions which focused on sustainable land management (SLM) and poverty eradication will be presented in this chapter, while other policy action plans like the Millennium Village Programmes, the Development Schemes on the River Tana and the Medium Term Plan for combating desertification, land degradation and mitigating the effects of drought will be discussed.

**CHAPTER SIX:** the Moroccan NAP, assessment of community involvement in the livestock grazing areas of the Qurzazate and Zagora which are said to be the most affected provinces in the highlands. Also, the chapter will evaluate the various institutions which coordinate the implementation of the legal, policies and programmes in the Moroccan National Action Plan to implement the CCD.

**CHAPTER SEVEN:** Conclusion and Recommendations.

# **CHAPTER TWO**

## **ANALYSIS OF THE UNCCD AND ITS SUPPORT PROGRAMMES IN AFRICA TO COMBAT DESERTIFICATION LAND DEGRADATION AND MITIGATE THE EFFECTS OF DROUGHTS**

### **2.1 Introduction**

This chapter analysis the United Nations Convention to Combat Desertification and/or Drought especially in those countries seriously affected in Africa. The chapter looks at the Conventions bottom up approach, its objectives, obligations to parties, the African Annexure of the Convention, and Convention's mechanisms such as the financial mechanism, capacity building and the synergy with other sister environmental organisations that emerged from the Rio like the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC). Finally the chapter will assess the contribution of partner organs facilitating the Conventions implementation such as the New Partnership for African Development (NEPAD), the Global Environmental Fund among others.

As mentioned in chapter one above, the Convention placed obligations on parties as to what they were required to do for its implementation. These substantive obligations, it could be divided into three different categories which are, the substantive obligations to all parties, developed parties and also to affected parties which this study is primarily focused. Generally, according to article 2 of the Convention,<sup>66</sup> parties are required to set up a long term holistic approach on the Convention's implementation which focuses on land management programs in a sustainable manner that aims at improving on land productivity. Furthermore, because the Convention's obligation to parties requires for the development of actions programmes that eradicate severe poverty and protect the environment through SLM practices, makes it broad. Thus, for the purpose of better understanding, focus here will be limited to only the provisions that concerns

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<sup>66</sup> See the UNCCD (n50) above.

affected parties in Africa. Article 5 deals specifically with the affected country parties. They are required to create long term action strategies and policies which involves local communities particularly women and youths in combating desertification. Moreover, these actions are to focus primarily on the socio-economic factors leading to the phenomena.

Article 10 of the UNCCD, request affected African parties, to create different strategies based on the reality on the ground through the setting up of what it refers to as National Action Programmes (NAPs) which gives priority to the implementation of the UNCCD.<sup>67</sup> Thus, Article 5(b) of the Convention also requires the strategies and areas given priority to in the adoption of the NAPs, to be represented through different policy frameworks aiming at eliminating acute poverty.<sup>68</sup> Also, Article 5(d) of the Convention placed obligation to the affected countries particularly in Africa, to encourage and promote civil society participation especially young people and women in particular in the actions to combat desertification, land degradation and to mitigate the impact of drought.<sup>69</sup> In addition, with regards to the participation of local communities and pastoralists in particular. Pastoralism<sup>70</sup> is a day to day activity in most of the affected countries in Africa particularly the countries that are case studies to this research. Thus, Article 10, 2f required affected parties to:

Provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes.<sup>71</sup>

With regards to capacity building, Article 19 requires affected parties to organize capacity training workshops with dry land local communities on how to implement the Convention

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<sup>67</sup> Ibid article 10.

<sup>68</sup> Ibid article 5b.

<sup>69</sup> Ibid article 5d.

<sup>70</sup> Pastoralism is a subsistence farming system whereby livestock's are reared in a particular pattern. In most cases particularly in many regions of Africa, it is a normal form of life in local communities. The herds are moved from geographic location to another in search of food (grass) to feed on. This farming practice creates a negative impact on soil quality. This is because; the soil gets compacted as they walk on and prevents water to easily infiltrate in it. See for further on this, [www.http://anthro.palomar.edu/subsistence/sub\\_3.htm](http://anthro.palomar.edu/subsistence/sub_3.htm) (accessed on October 22, 2013).

<sup>71</sup> Ibid article 10,2f.



through sound sustainable land management practices which aimed at combating desertification and/or mitigating the effects of drought.<sup>72</sup> Furthermore, in pursuit to meet the objectives of the Convention through capacity building, both the Conferences of the Parties, the secretariat of the Convention and other partners such as UNEP among others, provides regular support to affected parties in Africa to develop effective capacity building programmes.<sup>73</sup> These programmes have focuses on the grass-root population living in dry land areas, to facilitate the implementation of the UNCCD through the adoption and promotion of SLM practices.<sup>74</sup>

Also, the Convention further places the obligation on affected parties to create an enabling environment that incorporates their governments and, donor organizations in the implementation of their long term strategies to fight against desertification.<sup>75</sup> On the other hand, with regards to the developed parties, Article 6(e) of the Convention requires the transfer of technology and to provide financial supported to their less developed counterparts to support projects aimed at combating desertification.<sup>76</sup>

Furthermore, the Convention has regional annexes for its implementation.<sup>77</sup> Africa have nineteen articles in its annexure which relates to a wide range of aspects such as the scope of application,<sup>78</sup> the preparation and content of NAPs among parties,<sup>79</sup> the allocation of financial resources to fund anti desertification projects,<sup>80</sup> the obligations relating to African parties to the Convention<sup>81</sup> among others. However, some commentators like William Burns<sup>82</sup> hold that, among the different annexes of the Convention, the one relating to Africa is of particular importance for reasons being that, first, the African regional annex, unlike those in other

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<sup>72</sup> Capacity Building-A Cornerstone in the UNCCD Process available at <http://www.unccd.int/en/programmes/capacity-building/CWB/Pages/Capacity-Building-to-the-UNCCD.aspx> (accessed on December 17, 2013).

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> See (n55) Article 10 of the Convention.

<sup>76</sup> See (n52) above.

<sup>77</sup> The Convention has created five regional annexes which include; the Northern Mediterranean, Africa, Asia, Latin America and the Caribbean annexures.

<sup>78</sup> Article 7 of the Convention Annex for Africa.

<sup>79</sup> Ibid article 8.

<sup>80</sup> Ibid article 14.

<sup>81</sup> Ibid article 4.

<sup>82</sup> See (n17) above.

regions, emphasizes on both the affected parties and donors alike, to make financial commitments which are precise.<sup>83</sup> Also, the African annex takes into consideration the effects of desertification and drought to Africa, by emphasizing on parties to establish sound NAPs for the Convention implementation.<sup>84</sup> Moreover, the national action programmes as required by the Convention for parties to institute to promote sustainable land management practices to combat desertification. The NAPs in the context of the Convention, refers to all socio-economic, cultural and environmental actions put in place by parties aiming at the fight against land degradation, desertification and drought.<sup>85</sup> These actions include reforestation programmes, workshops on capacity building to local community dwellers on sustainable farming methods among others.

Also, unlike the other regional annex of the Convention, the African Annexure differs from others in that, article 3 of the African Annex requires affected parties to adopt particular approach which considers specific conditions of the phenomenon in Africa such as: the high proportion of arid, semi-arid and high sub-humid areas, the number of landlocked affected countries and article 4 of the annexure on implementing key elements in poverty eradication to combat desertification and/or the mitigation of drought in the Africa,<sup>86</sup> among others. Thus, the regional implementation annex for Asia for example,<sup>87</sup> actions differ from that of Africa in that, parties are to develop programmes which involve local communities and other partners to combat desertification and/or mitigate the effects of drought without focusing on poverty eradication on laying emphasis on non-coastal states affected by the phenomenon.

The UNCCD uses the Bottom–Up Approach which is the involvement of civil society organizations (CSOs) to facilitate the implementation of the Convention.<sup>88</sup> According to the Convention, the concept of civil society organizations is divergent. Such organizations include livestock breeders and foresters, and local community organizations within dry lands that are

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<sup>83</sup> Ibid at 18.

<sup>84</sup> Ibid.

<sup>85</sup> See Darkoh (n16) above at p.15.

<sup>86</sup> Regional implementation for Africa Annex 1 available at <http://www.unccd.int/en/about-the-convention/pages/Text-Annex-1.aspx> (accessed on December 16, 2013).

<sup>87</sup> Regional implementation for Asia Annex II available at <http://www.unccd.int/en/about-the-convention/pages/Text-Annex-II.aspx> (accessed on December 16, 2013).

<sup>88</sup> National, regional and sub-regional programmes involving civil society organisations available at <http://www.unccd.int/en/about-the-Convention/Action-Programmes> (accessed on December 14, 2013).

capable of exchanging their experience and traditional knowledge on land degradation and management skills. Trade unions, farmers groups national or international, are considered part of civil society organizations.<sup>89</sup> Civil society organizations are regarded as valuable partners, assisting in enhancing the Convention's implementation because it is believed they live in dry land areas, threatened, or already degraded and have the knowledge and capability of facilitating its implementation.<sup>90</sup> Furthermore, synergy among other Rio sister Conventions is considered as a vital tool in the implementation of the UNCCD. Thus, both the secretariats of the UNCCD, the CBD, and the UNFCCC Conventions born from Rio, have created a synergetic approach to enhance the implementation of the objectives of the different Conventions.<sup>91</sup> In meeting the goals of the three Conventions, the secretariats established the Joint Liaison Group (JLG) in 2001 aimed at facilitating coordination and collaboration on the activities of the Conventions. So far as of the time of writing, the JLG has held nine meetings with the latest in April 2011 at Bonn.<sup>92</sup> The meeting focuses on evaluating the level of implementation on programmes of the three Conventions, in a holistic approach which encourages adaptation on climate change, biodiversity conservation and the promotion of SLM practices at national and regional levels.<sup>93</sup>

Due to the exacerbation of desertification and the obstacles to achieving the Millennium Development Goals (MDGs) especially in Africa, the International Year of Desert and Desertification (IYDD) was launched in 2003 under the auspices of the United Nations General Assembly declaring 2006 the IYDD.<sup>94</sup> The aim of the IYDD was to promote awareness to the public particularly those living in dry land areas, about the adverse effects of desertification as part of strengthening the Conventions Bottom-Up Approach. The International Year of Desert and Desertification, was also to help protect dry land biodiversity and the knowledge and traditions of people whose everyday lives are directly affected by desertification.<sup>95</sup>

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<sup>89</sup> A bi-monthly update on the work of the United Nations Conventions to Combat Desertification (hereinafter referred as UNCCD) issue 4.4 available at <http://www.newsbox.unccd.int> (accessed on December 13, 2012).

<sup>90</sup> Ibid.

<sup>91</sup> The UNCCD/CBD/UNFCCC Joint Liaison Group: "Synergy among the Sister Conventions" available at <http://www.unccd.int/en/programmes/RioConventions/pages/default.aspx> (accessed on December 15, 2013).

<sup>92</sup> Ibid.

<sup>93</sup> Ibid, the JLG of the Conventions focuses on adaptation, gender and actions on forest protection.

<sup>94</sup> The United Nations General Assembly's 58<sup>th</sup> Ordinary Session held in 2003.

<sup>95</sup> Ibid (UNGA 2004).

However, the main reason for launching the IYDD was among other issues, to facilitate the Conventions implementation. The IYDD was also a platform to discuss the issue of desertification as a global problem of common concern.<sup>96</sup> The IYDD laid down four objectives for future measures of combating desertification and mitigating the impact of drought. The objectives were abbreviated LAND and are Long-term oriented implementation of the UNCCD. These measures include, the Awareness of the implications of desertification, networking with all stakeholders and Dissemination of information relating to the UNCCD.<sup>97</sup> The IYDD also emphasis's on the links which exist between desertification and a number of socio-environmental issues such as food security, conflict, migration, health etc. Therefore it is imperative to liase with global agencies like the World Health Organization (WHO) in implementing the UNCCD.<sup>98</sup>

Furthermore, despite the aforementioned issues highlighted as the outcome of the IYDD events which appear positive on one hand, the International Year of Desert and Desertification failed to answer some important questions of the Convention. The IYDD failed in providing a sound mediation on the debate concerning the definition of desertification which some critics consider it to be based on climatic realities and if it is of global concern which requires global actions in combating it. Also, at the time when desertification was considered a major threat to sustainable development especially to Africa, the IYDD instead took pride in celebrating the world's deserts and its people. This therefore gave many critics the impression that the IYDD was a mere political arrangement rather than events geared towards combating desertification.<sup>99</sup> However despite these criticisms, the IYDD could be considered successful because it also provided a platform where parties especially those from Africa, where the threat is high, to present their proposals on how to combat desertification and mitigate the impacts of drought.<sup>100</sup> The UNCCD make use of various mechanisms as instruments to facilitate its implementation. Thus, the discussion that follows will focus on analysing these mechanisms of the Convention.

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<sup>96</sup> L.C Stringer "Reviewing the International Year of Desert and Desertification: what contribution towards combating global desertification and implementing the United Nations Convention to Combat Desertification?" (2006) vol. 72 *Journal of Arid Environments*.

<sup>97</sup> *Ibid* at p.3.

<sup>98</sup> *Ibid* at p. 6.

<sup>99</sup> *Ibid* at p.7.

<sup>100</sup> *Ibid*. The Algerian government used the IYDD as a platform to propose that the year 2010 to 2020, should be considered the "International Decade of Desert and Desertification".

## **2.2 The Mechanisms Introduced By the UCCD to Facilitate Its Implementation**

### **2.2.1 Financial Mechanism**

For a Convention of international magnitude like the UNCCD to successfully realize its objectives, it is important to have adequate funding. There are a number of sources of funding to the CCD which include; the Global Environmental Facility (GEF), the World Bank, among others. Moreover, African state parties to the Convention are making significant contributions on their various national budget allocations, aimed at funding projects to combat desertification and mitigate the impact of drought.<sup>101</sup> These projects are sponsored in the area of environmental protection, natural resources management and the agricultural sectors. However, these sectors have been criticized to have been underfunded by their respective governments.<sup>102</sup> In addition, on a bilateral and multilateral level, programmes like those concerning community based natural resources management, policy reforms, research and monitoring have been instituted to implement the UNCCD and SLM projects in Africa. These projects have been funded by various organizations such as the Japanese International –Co-operation Agency (JICA), European Union (EU), the African Development Bank (AFDB) and the World Bank among others.<sup>103</sup>

Furthermore, at the global level, the Global Environmental Facility (GEF) in relation with its implementing agencies like the United Nations Environmental Program (UNEP), the World Bank and the United Nations Development Program (UNDP) provide financial support for programmes aimed at combating desertification and mitigating the effects of droughts in Africa. The GEF became a funding mechanism to facilitate the implementation of the UNCCD and SLM, through the approval of land degradation in 2002 as an area of concern to the Convention. Also, the Convention developed the GEF Operational Programs 15 (OP15) on sustainable land

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<sup>101</sup> The African Review Report on Drought and Desertification “Fifth meeting of the African Committee on Sustainable Development” (hereinafter ACSD-5) Regional Implementation Meeting (RIM) for CSD-16 Addis Ababa (22<sup>nd</sup> – 25<sup>th</sup> October, 2007) P.35.

<sup>102</sup> See Country Reports 2006 submitted to ECA.

<sup>103</sup> See Le Houerou et al (n9) above.

management. Under this scheme, both pilot and large scale projects have been funded by the GEF to enhance partnership with other agencies working in-line with the UNCCD to combat land degradation through soil management techniques alongside the local population within communities having direct links with land for different purposes.<sup>104</sup> Moreover, it has been widely confirmed that during the years 2002 to 2004, there was an estimated GEF funded projects of (about 72 million dollars) which focused primarily on combating deforestation and desertification in Africa.<sup>105</sup>

In June 2007, a US 150 million dollars funding project was approved by GEF for a “Strategic Investment Program (SIP) for sustainable land management for sub-Sahara Africa”.<sup>106</sup> This programme aims at among other issues, to boost up food security, restoring soil fertility, increase incomes from farms, engaging and empowering local communities to be well equipped in the management and use of their land in an efficient manner. Finally the programme also aims at the maintenance of ecosystems services,<sup>107</sup> providing financial support to those; NEPADs highly structured objectives on agriculture and the environment; the UNCCD Action Plans; Specialized programs on drought and desertification under the auspices of the African Union; and also to countries which their national plan of action, is aimed at achieving relevant regional goals in fighting land degradation, desertification and mitigate the effects of drought.<sup>108</sup> Thus according to the general statistic of GEF as from the beginning of 2007, 28 countries in Africa that are parties to the Convention to combat desertification and mitigate the effects of drought, were beneficiaries of these funding initiatives.<sup>109</sup>

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<sup>104</sup> Country Reports submitted to ECA and UNCCD.ICCD/CRIC (3)/2/Add.14 January (2005). Synthesis and preliminary analyses of information contained in the reports submitted by affected African country parties to the UNCCD Secretariat.

<sup>105</sup> Hurni H, Giger M, and Mayer K (eds) 2006: Soils on the global agenda. “Developing International group of specialist of the IASUS Working Group of the International Union of Soil Sciences (IUSS), Centre for Development and Environment Bern (2006) P.64.

<sup>106</sup> See H, Le Houerou (n9) above.

<sup>107</sup> Ibid.

<sup>108</sup> See the Global Environmental Facility (hereinafter GEF) (2007) “Projects Executive Summary” available at <http://www.gefweb.org/uploaded> Files/Documents/Council Documents PDF DOC/GEF 31/SIP Executive Summary 51407.

<sup>109</sup> Ibid.

On the other hand while the GEF has been highly applauded to be a supportive agency that works in line to facilitate the implementation of the objectives of the UNCCD, the GEF has also been criticized gravely for its shortcomings. Comparatively, looking at funds allocated to other GEF funded environmental related issues like that of climate change and biodiversity conservation, the amount allocated for projects aimed at combating desertification and mitigating the impact of drought is relatively small.<sup>110</sup> Also, some critics hold that, there is a need for the simplification of the procedures necessary in accessing funds from the GEF. Thus, as a result of its complex procedures, stakeholders who are deserving funds like affected parties in Africa are in most cases not able to access these funds because they are lacking the capacity to meet these requirements.<sup>111</sup>

### **2.3 The New Partnership for African Development (NEPAD)**

During the summit of the then Organization of African Unity (OAU) now the African Union (AU) held in Lusaka, the heads of states and governments in July 2004 adopted the NEPAD.<sup>112</sup> Thus, there was a merger of two former African development initiatives such as the “Millennium Africa Recovery Program which comprised of the Omega Plan for Africa and the Economic Commission for Africa’s Recovery (COMPACT). According to the NEPAD, both the natural and human resources of the African Continent are important to tackle and eradicate poverty in the region. NEPAD has as objective among other issues; to eradicate poverty and to place African countries individually and collectively on a path towards sustainable development and growth. It is also aimed at putting a halt on the marginalization of Africa in the international milieu, to enhance its full beneficial integration into the global economy, and to accelerate women’s empowerment.<sup>113</sup>

Among the sectorial priorities of NEPAD, environmental protection is given much attention. Perhaps that is the reason why it is considered as a regional instrument aimed at facilitating the

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<sup>110</sup> See H, Le Houerou (n9) above.

<sup>111</sup> Ibid.

<sup>112</sup> The New Partnership for African Development (here after referred as NEPAD).

<sup>113</sup> W Nkuhlu “Chairperson of the NEPAD Steering Committee: Action Plan of the environment Initiative” (October 2003).

implementation of the UNCCD in Africa.<sup>114</sup> Even though it is of importance to implement the environmental initiative of NEPAD together with other NEPAD objectives in a harmonious fashion, this research is limited only to the environmental initiatives of NEPAD.

### **2.3.1 NEPAD's Action Plan on Environmental Initiatives**

About 80% of the African population depends on land for agricultural purposes and as a result of this, importance is attached to land by the African people for their livelihood. The NEPAD environmental programme was instituted to ensure sound land management. This action was a response to eradicate poverty in the Continent through sound land management techniques. Moreover, the framework to institute this plan of action came during the ninth session of the African Ministerial Conference on the Environment (AMCEN), which was held in Uganda in July 2002 and finally endorsed during the African Union summit in Durban.<sup>115</sup> This environmental action by NEPAD falls in line with the provisions of the UNCCD which place emphasis on the Regional Implementation Annex for Africa (RIAA).<sup>116</sup> Also, it emphasizes that parties are required to provide in their respective national budget, finances that will facilitate the implementation of the Convention.<sup>117</sup>

The environmental initiative of NEPAD has outlined activities which include: sustainable land management use, integrated water management and the management of range-lands, the development of new energy sources, among other issues. These activities as a regional action designed by NEPAD, are organized with the aim of facilitating the UNCCD under what is known as the Thematic Programme Networks (TPN). The TPN are as follows:

- a) *TPN1: The Integrated management of water resources of the SADC secretariat governed by the directorate of infrastructure Gaborone;*

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> See (n73) above for details on the Regional Implementation Annex for Africa (RIAA).

<sup>117</sup> See Article 61(f) of the UNCCD.



- b) *TPN2: Sustainable land use (agro forestry and soil conservation): the institute of the Sahel and the permanent inter-state committee on drought control in the Sahel (INSAH/CILSS), Bamako;*
- c) *TPN3: The Rational use of rangelands and development of fodder crops: Inter-African Bureau for Animal Resources of the AU, Nairobi;*
- d) *TPN4: Ecological monitoring, natural resources mapping remote sensing and early warning systems: African Organization for mapping and remote sensing, Algiers;*
- e) *TPN5: The promotion of new and renewable energy sources: National Agency for Renewable Energy of Tunisia and Environmental Development Action in the third World (ENDA), Dakar;*
- f) *TPN6: The development of sustainable agriculture: AU/semiarid Food Grain Research and Development (SAFGRAD), Ouagadougou.*<sup>118</sup>

Capacity building is a key aspect in the implementation of the CCD. Moreover, NEPAD has organized workshops within the thematic areas identified, which brings together experts in the field to combat desertification and mitigate the impacts of drought, alongside local community representatives who depend on dry land areas for their livelihood.<sup>119</sup> A series of workshops were organized aiming at identifying project proposals submitted to combat desertification. This brought about fifty experts and civil society representatives across Africa.<sup>120</sup>

Furthermore, NEPAD is highly committed in the protection and conservation of Africa's forest ecosystems, of which, its sustainable use is vital in contributing to the fight against land degradation, desertification and drought in the continent. Deforestation and over exploitation of the forest among other issues, are as a result of but not limited to, the destruction of the forest for fuel wood, building construction, export and agricultural purposes. However, the actions of NEPAD in the forest sector as a regional instrument to implement the UNCCD, could be improved through the facilitation of collaboration among African states especially those

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<sup>118</sup> See Le Houerou et al (n9) above. See also, Action Plan for Environmental Initiative available at [www.nepad.org](http://www.nepad.org) at p. 40 and 41 (accessed on January 8, 2013).

<sup>119</sup> Ibid. The thematic workshop on desertification jointly organized by NEPAD and the UNCCD Secretariat held on the 19<sup>th</sup> and 20<sup>th</sup> of January 2003 in Algiers.

<sup>120</sup> Ibid.

seriously affected by drought and desertification. Through this institution which will encourage African parties to the Convention to establish effective national local institutions that give effect to sound national laws in the protection of forest.<sup>121</sup> Also, through the NEPAD's environmental initiative, a strategic seminar was organized in 2004 by the "African Forestry and Wildlife Commission (AFWC), which evaluated how the forest sector has been effectively managed through the implementation of NEPAD's objectives".<sup>122</sup>

However, despite the widely acclaimed successes of NEPAD as a regional instrument to facilitate the implementation of the Convention, a number of short-comings were identified by some critics who questioned NEPAD's competence to assist the Convention sound implementation in Africa. Firstly, civil society organization and NGOs were not invited for consultation at the time when NEPAD was to be formed. Thus, the question was raised about NEPAD's reliability to assist the UNCCD meets its objectives. This is because the Convention Bottom-up approach clearly suggests the inclusion of the local community in meeting the Convention's obligations.<sup>123</sup> Also, the provisions of NEPAD states that African leaders should set up the new partnership instrument "on behalf of their people and not with the general interest of the African people". This could be true due to the fact that the majority of those living within dry land communities who experience the direct effects to drought and desertification were not given the opportunity to be part of the process of the setting up of NEPAD.<sup>124</sup>

Moreover, judging from these issues raised, one could conclude that even though NEPAD's environmental initiative expresses a good vision in protecting and rehabilitating Africa's land from degradation, drought and desertification, much still needs to be done especially in dry land local communities which will boost the NEPAD's campaign as an instrument for implementing the UNCCD in Africa. Besides NEPAD, another sub-regional instrument which is regarded as a mechanism to implement the Convention, is IGAD.

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<sup>121</sup> Barbara Ruis in M. Kidd (ed) "Forest Issues in Africa" at 245-46.

<sup>122</sup> Ibid.

<sup>123</sup> P Bond *A Civil Society Reader on the New Partnership for Africa's Development* (Africa World Press, Inc) 2002 at 52.

<sup>124</sup> Ibid.

## 2.4 The Inter-governmental Authority on Development (IGAD)

The organization was formerly known as the “Inter-governmental Authority on Drought and Development” (IGADD). This was later changed in 1996 to what is currently known as IGAD. The organization is strictly an east African affair with Countries such as: Ethiopia, Kenya, Uganda, Somalia, Eritrea, Djibouti and the Sudan, which now has been separated.<sup>125</sup> The organization set-up various initiatives which focused in the areas of “Conflict Early Warning and Early Response Mechanism” (CEWARN) relating to land degradation due to unsustainable land management practices. Most countries in East Africa primarily practice pastoralism, which has also negatively contributed to land degradation as a result of the concentration of flocks wearing out the land carrying capacity. This practice has exacerbated conflicts among states and within local tribes practicing pastoralism, searching for grass and other types of food to feed their livestock. According to Barrow, “livestock have two main effects on soil: they remove vegetation thus, exposing soil to wind and rain, and either trample the surface dislodging soil particles or compact the surface reducing infiltration”<sup>126</sup>

The severe effects of drought and desertification which plagued the sub-region, prompted IGAD to create CEWARN to act as a unit with the technical expertise to report to its Secretariat early warnings to land degradation and drought and also to provide suggestions on how they could be addressed.<sup>127</sup> This action by IGAD was aimed at facilitating the implementation of the UNCCD in order to prevent actions that could cause more lands to be degraded. However, despite the aforementioned action by the organization, which on a cursory examination looks positive, some commentators have criticized its inability to provide sound resolutions on the numerous conflicts within the sub-region. These conflicts are associated with land use and acquisition. They include: the Sudan Somali conflict, the Northern Ugandan crisis, amongst others. These conflicts which are associated with land ownership for agricultural purposes, are used as a yard-stick to assess the organizations competence in successfully implements the UNCCD within the sub-region.<sup>128</sup>

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<sup>125</sup> Ulf Terlinden “*IGAD- Paper Tiger facing Gigantic Tasks*” (Berlin, February 2004).

<sup>126</sup> C.J Barrow “*Land degradation*” Cambridge University Press, 1<sup>st</sup> ed (1991) 208.

<sup>127</sup> Ibid at 18.

<sup>128</sup> Ibid.

Furthermore, apart from the enormous challenges encountered by IGAD, the issue of conflict resolution and conflict management within the sub-region, largely caused by the rivalry for land acquisition, has registered some progress. A case in point<sup>129</sup> is the Sudan conflict largely managed by the United States of America. Another regional instrument which is used to facilitate the implementation of the Convention (CCD) is TerrAfrica.

## **2.5 TerrAfrica: The Promotion and Facilitation of Sustainable Land Management in Sub Saharan Africa.**

TerrAfrica is a partnership programme to NEPAD, which aims at combating land degradation in Africa through the promotion of sound sustainable land management methods within Africa.<sup>130</sup> TerrAfrica is a regional instrument which was designed to facilitate the implementation of the CCD through coordination from NEPAD. Through the various initiatives of this institution, emphasis has been placed on strengthening sustainable land management practices and policies within various countries. Moreover, according to estimation from TerrAfrica,

40 discrete investment operations are in preparation or implementation under the Structural Investment Programme (SIP), 31 are at Country level and 9 Multi-Country or regional operations.<sup>131</sup>

Furthermore, under the TerrAfrica partnership program, Ghana and Nigeria were able to successfully implement a strategic action plan on sustainable land management.<sup>132</sup> However, as a result of the nexus which exists between land management, food security and climate change, TerrAfrica organized a site event during the UNCCD-CRIC in Istanbul Turkey.<sup>133</sup> Moreover, this action was aimed at creating awareness within the local population and to help policy makers within dry land communities, understands the linkages between these three related environmental

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<sup>129</sup> Ibid at 20.

<sup>130</sup> TerrAfrica Annual Report (2008) on Regional Sustainable Land Management.

<sup>131</sup> Ibid, this indicates the results of the institutions programme in the year 2008.

<sup>132</sup> Ibid at 13. In Ghana, there was the “Food and Agricultural Sector Development Policy Agricultural SLM Strategic Plan” and the “Medium term Strategy of the Federal Ministry of Agriculture and Water Resources (FMAWR) of Nigeria”. These programmes were aimed at among other things, promoting sustainable land management (SLM) and improve food security and agricultural productivity.

<sup>133</sup> Ibid, at 22. Site event organized by the Secretariat of TerrAfrica at the UN-CCD-CRIC in 2008 titled “Why is Sustainable Land Management Important to overcome the food crisis and address climate change”.

issues. Also, this site event was to improve the capacity of these local communities in the dry land areas, to respond to climate change adaptation as an important measure to implement the UNCCD.

## 2.6 Conclusion

In this chapter, the substantive provision of the UNCCD relating to the obligation to parties has been discussed. Also, the bottom-up approach as enunciated by the Convention has been described. Thus, various mechanisms set up for the promotion of the Convention's implementation such as the Global Environmental Facility and its partner agencies like the World Bank, the United Nations Environmental Programme among others, were also presented. Furthermore, regional organizations with the aim of facilitating sustainable land management practices in Africa to combat land degradation, desertification and drought such as NEPAD, IGAD and the TERRAFRICA have been discussed.

Moreover, it is important to mention that, all the Fifty Four countries in African have signed and ratified the Convention.<sup>134</sup> Also, with regards to the statistics on the various country reports presented to the Convention's Secretariat, forty two African countries submitted their reports on the progress made and difficulties encountered in the implementation of the Convention through their NAPs in 1999, Forty Eight in 2002, Fifty in 2004, Thirty Nine in 2010 and just Twenty Eight in 2012.<sup>135</sup> However, the statistics presented show that despite progress made by parties in implementing the Convention, issues concerning desertification, land degradation and drought seem to be taking a back seat in different national policies of the parties concerned. This could be evaluated based on the facts presented in the reports of parties from 2010 and 2012 showing a drop drastically from what was obtained in the previous years, thus, portraying a lack of commitments to the UNCCD by the African parties.

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<sup>134</sup> See the Secretariat of the UNCCD (n46) above.

<sup>135</sup> Statistics from the Executive Secretary of the UNCCD Monique Barbut. Source in file with the author. Further details can be obtained also at <http://www.unccd.int/PRAIS> (accessed on November 28, 2013).

## **CHAPTER THREE**

### **THE SOUTH AFRICAN NATIONAL ACTION PROGRAMMES**

#### **3.1 Introduction**

One of the aims of this chapter is to assess the various action programmes that have been instituted by South Africa, in both the public and private sectors, in combating desertification and mitigating the effects of drought. As established in Chapter Two, desertification does not necessarily refer to the advancement of the desert; it refers to land degradation, which may be caused by both human and natural factors, which tend to interrelate to one another. Also, this chapter will describe what the UNCCD, requires South Africa to do in establishing its NAP to implement the Convention, and also what it proposes to give priority to in its NAP. Furthermore, given the fact, that there is no specific legislation in South Africa enacted to facilitate the implementation of the UNCCD, this chapter will attempt the evaluation of South Africa's NAP, by the different programmes mentioned in its NAP. Also, analyses will be made to the various institutions that guide the areas of priority as indicated in the NAP, as mechanisms to assist the NAP in meeting its objectives.

In addition, this chapter will present the state of the environment in South Africa, and also trace earlier action programmes to combat desertification and mitigate the effects of drought before the establishment of the NAP, as a means of addressing issues of desertification and drought. While those instituted in response to meeting South Africa's commitments under the UNCCD Convention will also be assessed.

#### **3.2 State of the Environmental of South Africa**

South Africa with a population of about 51 77 million people<sup>136</sup> is one of the world's richest countries with plants and animal biodiversity.<sup>137</sup> Its long coastline stretching towards the desert

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<sup>136</sup> South Africa's geography available at <http://www.southafrica.info/about/animals> (accessed on December 23, 2013).

with Namibia, is bordered south, to the Indian Ocean, to the north east with Botswana and Zimbabwe, to the north with Swaziland and Mozambique, and to the south west by the Atlantic Ocean.<sup>138</sup> South Africa's total land surface cover over 1.2 million square kilometers, with the Limpopo Province among its nine provinces, with the highest mean annual temperature of about 23.3 degree centigrade.<sup>139</sup> Also, the Eastern Cape Province has the lowest annual temperature of about 11.3 degree centigrade.<sup>140</sup> Although soil is one of South Africa's most important basic resources, it is currently facing degradation and loss of plant biodiversity through erosion.<sup>141</sup> This is partly because, over 91 percent of South Africa's total land surface is made up of arid, semi-arid and sub-humid climatic zones.<sup>142</sup> Thus, according to the 1999 report on the state of land degradation in South Africa, by Hoffman and Ashwell 2001,<sup>143</sup> areas which had the highest levels of soil and vegetation degradation, were the Limpopo Province, followed by KwaZulu Natal and the Eastern Cape. The report also indicated a number of factors which are responsible for soil degradation in South Africa, which include both human and natural factors.

### 3.3 South African National Action Plans of Implementation

There are various institutional arrangements that have been put in place by the South African government in keeping with her obligations under the UNCCD.<sup>144</sup> DEAT is the domestic entity that takes charge as the focal point to implement the Convention.<sup>145</sup> South Africa ratified the UNCCD in September 1997, and is committed to implementing a NAP which is based on a long-term strategy to address the problems of desertification and drought in the entire country.

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<sup>137</sup> Some of these areas with the rich plant and animal biodiversity include: the Cape flora region, the iSimangaliso Wetland Park among others, available at Brand South Africa:

<http://www.southafrica.info/geography/about/geography.htm> (accessed on December 22, 2013).

<sup>138</sup> See South Africa's geography (n136) above.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> E Vester et al. (n29) above at 308.

<sup>142</sup> See GG 27952, Pretoria August 26, 2005.

<sup>143</sup> Hoffman and Ashwell "Nature divided: Land degradation in South Africa" University of Cape Town Press, Cape Town (2001).

<sup>144</sup> The World Summit On Sustainable Development: Johannesburg South Africa (hereinafter referred as WSSD) 2002.

<sup>145</sup> The Department of Environmental Affairs formerly referred to as (DEAT) as the government sector in charge among other state instrument, in environmental protection in the Republic of SA.

However, as required by the Convention for parties to develop their NAPs, Byron-Cox<sup>146</sup> has proposed ten guidelines for parties for the development of NAPs in order to fulfill the requirements of the Convention. Among these proposed steps are that the parties should identify activities strategically with specific timelines and provide available financial resources to implement them. Also, parties need to clearly outline what needs to be done and to involve the local population in the entire process aimed at ensuring a sustainable land management among others.<sup>147</sup> Rather than using these guidelines as a framework, however, the discussion that follows will focus on the South African NAP, as submitted to the Convention's Secretariat. This will be followed by, an evaluation of the action programmes in the NAP, and also analysing the legislation and policies implemented by the government and other actors involved in the fight against land degradation, desertification and drought as instruments which guide the Convention's implementation.

### **3.4 What South Africa Proposes to Focus in its NAP**

South Africa submitted its NAPs to the Convention's Secretariat in 2004; its vision is "to promote sustainable land management throughout South Africa", through achieving the following every three years'.<sup>148</sup> In order to: firstly, build a strong and reliable approach to alleviate poverty through the promotion of sustainable land management projects in the country, secondly, to create a system which identifies the possible factors leading to land degradation and drought events and implement actions to combat the phenomena; and lastly, to involve civil society, particularly those in areas which are affected severely by land degradation, including national and international actors, in ensuring sustainable land management.<sup>149</sup>

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<sup>146</sup> R .A Byron-Cox "Ten steps in the practical organisation of the NAP alignment process" available at <http://www.unccd.int/Lists/SiteDocumentslibrary/actionprogrammes> (accessed on November 10, 2013).

<sup>147</sup> Ibid.

<sup>148</sup> South Africa's National Action Programmes submitted to the UNCCD Secretariat available at <http://www.unccd.int?ActionProgrammes/SouthAfrica> (accessed on November 20, 2013).

<sup>149</sup> Ibid at p.56.



According to the South African NAP, eight priority areas are earmarked by the strategy which include:

- 1) Strengthened governance in the national and provincial spheres for the integrated and coordinated thrust in sustainable land management,
- 2) Strengthened local institutions and instruments for SLM and projects that contribute to substantial eradication of rural poverty, coupled with appropriate interventions to promote community health and thus protect social assets,
- 3) Effective and adequate financing and resource mobilization, involving current and new mechanisms,
- 4) Effective mobilization, generation and delivery of the knowledge and information required to support SLM projects,
- 5) Assessment of and improvement to policies that impact on land management,
- 6) Assurance of sustainable outcomes from the Land Reform Programmes,
- 7) Monitoring, evaluation and continuous improvement of the programmes, and
- 8) A programmatic strategy for local implementation projects.<sup>150</sup>

Furthermore, these strategic priority areas are focused on three principal areas based on what South Africa proposed to do for implementing the Convention within its domestic legal and policy systems. These include: ensuring sustainable land management and poverty eradication, balancing the gender equation in projects on SLM with emphasis on the involvement of women and youths and, finally, strengthening partnerships on sustainable land management projects. Among the programmes to be discussed here that relate primarily to the three focus areas of South Africa's NAP, will be the Working for Water Programme, the Environmental Monitoring Group and the Land Care Programme. In order to understand the contribution of these programmes, it is important to put them in the context of previous legislation. The next section will concern itself with earlier action to combat desertification and drought in South Africa.

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<sup>150</sup> Ibid at p. 57.

## 3.5 Early Actions to Combat Desertification and Drought in South Africa

Before South Africa became a party to the UNCCD, there were various government actions aimed at combating land degradation and desertification and mitigating the effects of drought. In this section, the various actions earlier instituted by the government of the time to fight against land degradation are traced. It should be noted that, even though farmers were required individually to create free passages for water during rainy periods with the intention of preventing the land from water erosion, there was no single legislation in the country which gave specific attention to soil protection until after 1941,<sup>151</sup> when the Forest and Veld Conservation Act was passed. The discussion which follows will deal with a range of relevant legislation and programmes.

### 3.5.1 The Forest and Veld Act 13 of 1941

The Forest Veld Conservation Act<sup>152</sup> is regarded as the first prominent legislation that paid particular attention to soil conservation, regulating all aspects of land management. The Act makes it clear that the Governor General could, if he so deemed it necessary, expropriates any land the use of which promotes erosion, among other things, for the interest of all.<sup>153</sup> The Act successfully declared several lands as areas which are conserved for the interest of the entire nation.<sup>154</sup>

This Act suffered from several short-comings. Firstly, soil conservation was solely in the hands of the government during this era, with the authorities exercising this power without the involvement of the civil society.<sup>155</sup> This despite the actions of individual farmers mentioned above which from a cursory examination appear relevant to land conservation. Secondly, the

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<sup>151</sup> See Vester, et al. (n 29) above.

<sup>152</sup> Act 13 of 1941.

<sup>153</sup> See (n 89) at 313.

<sup>154</sup> See Section 5 of the Act (Act 13 of 1941).

<sup>155</sup> See (n 91) above. Also see the House of Assembly Debates of May 23 1946 Col 8268.

various government actions under this Act were designed without much concern for addressing degradation from a preventive perspective, and these actions were geared towards trying to fix lands that had been degraded already.<sup>156</sup> As a result of this lack of emphasis on prevention, degradation of further land continued even when actions were being taken to rehabilitate those already degraded. This prompted the putting in place of a new Act, namely the Conservation of Agricultural Resources Act 86 of 1983.

### 3.5.2 The Conservation of Agricultural Resources Act of 1983<sup>157</sup>

The Conservation of Agricultural Resources Act was instituted for many reasons. Firstly, it was aimed at repealing the previous Weeds Act<sup>158</sup> and the Soil Conservation Act.<sup>159</sup> Secondly, according to DEAT, although an estimated 2 billion rands was spent in 1983, 1.2 million hectares of productive agricultural land had been lost, primarily due to soil erosion and deforestation.<sup>160</sup> Moreover, previous Acts to conserve soil had failed to successfully conserve soil in a manner which incorporated all areas of soil management and the involvement of the local farmers.<sup>161</sup> However, the new Act was aimed at involving local communities, working on soil conservation and management. The Act also had as its objective, the simplification of the procedure for prosecution that was difficult in previous Acts.

The Act also had its limitations. Firstly, under the Act, much power was accorded to the Minister of Land Affairs and Agriculture, which he used in order to take action without expert advice.<sup>162</sup> Secondly, the scope of the Act did not cover all lands in the country, especially those found in urban centres.<sup>163</sup> Moreover, although these earlier action programmes were designed for

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<sup>156</sup> Ibid.

<sup>157</sup> Act 43 of 1983 (hereinafter referred to as CORA).

<sup>158</sup> Act 42 of 1937 (hereinafter referred to as the Weeds Acts).

<sup>159</sup> Act 76 of 1969 (hereinafter referred to as the Soil Conservation Act).

<sup>160</sup> Department of Environmental Affairs 'State of the environment' "" available at (<http://soer.deat.gov.za/themes.aspx?m=47>) accessed February 27, 2013.

<sup>161</sup> See House of Assembly Debates dated April 15, 1984 Cols 2921, 4944.

<sup>162</sup> Ibid at 319.

<sup>163</sup> M Kidd "Environmental Law in South Africa" 2 ed (2011) 135. (The Act did apply to the South African Development Trust Land).

sustainable land management, the discussion that follow, will focus on assessing programmes implemented after South Africa became a party to the UNCCD. These include: the National Environmental Management Act (NEMA), the Working for Water programme, the Environmental Monitoring Group among others.

### **3.6 The National Action Programmes under the UNCCD**

There are three mechanisms in South Africa which provide protection for the environment. The first is the constitutional perspective on environmental protection which takes the form of either a regulatory or rights based method of approach.<sup>164</sup> Even though a complete discussion on the constitutional provision governing environmental protection is not within the scope of this study, it is important to describe the section of environmental right in the supreme law of the land. According to Section 24 of the Constitution:

“Everyone has the right-

- (a) To an environment that is not harmful to their health or well-being; and
- (b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
  - (i) Prevent pollution;
  - (ii) Promote conservation; and
  - (iii) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”<sup>165</sup>

The second mechanism is the use of “framework legislations” and the last is the setting up of specific laws which provide for the protection of the environment. The framework legislation in which other specific environmental instruments are rooted in South Africa is the National Environmental Management Act (hereinafter NEMA), which gives impetus to environmental protection. NEMA, as a framework will form the basis of the discussion of the specific laws and programmes that follows.

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<sup>164</sup> Section 24 of the Constitution of the Republic of South Africa (hereinafter referred to as ‘the Constitution’) laying-down environmental rights in the Constitution.

<sup>165</sup> Ibid Section 24(b) places the obligation on the government to recognise and fuse the three pillars of Sustainable Development which include; the environment, social and the economic factors.

### 3.7 The National Environmental Management Act (NEMA)

NEMA<sup>166</sup> has as its aim to provide a platform for the development of other specific environmental **legislation** and also for non-binding principles of international character commonly referred to as ‘soft law’.<sup>167</sup> The legislation adopted under NEMA “may also contain elements of framework legislation,”<sup>168</sup> which cover an array of different pieces of environmental laws and regulations. NEMA also provides the spirit of “co-operative governance procedures,”<sup>169</sup> which is considered as creating various means for the implementation of the CCD in the country. NEMA emphasises a coordinated approach to environmental protection by various actors in the implementation process such as the government and the civil society to take action in an integrated fashion. In the spirit of the Convention, NEMA requires the incorporation of civil society participation in issues of environmental concern.<sup>170</sup> Civil society participation in the context of the Act, takes the form of provision of opinions during the National Environmental Advisory Forum.

The CCD calls also for state parties, to collaborate with donor organizations working to facilitate the implementation of the Convention, in order to promote and encourage the use of a participatory approach within areas that are seriously affected by drought and or desertification,<sup>171</sup> which is encouraged by NEMA. The fact that NEMA takes into consideration the importance of civil society participation could in its own right be regarded as a commitment by the government of South Africa to the implementation of the CCD. However, this can only be evaluated through an examination of the policies and laws which have emerged from the Act. Furthermore, NEMA provides a platform where other stakeholders within different spheres of environmental governance are integrated in what is known as “management by outsiders”

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<sup>166</sup> Act 107 of 1998 (hereinafter referred to as NEMA).

<sup>167</sup> M Van der Linde “ National Environmental Management Act 107 of 1998” in Strydom and King (ed) Fuggle and Rabie’s *Environmental Management in South Africa* Ch.7 p. 193.

<sup>168</sup> Ibid at 194.

<sup>169</sup> Section 7-10 of NEMA.

<sup>170</sup> Section 3-6 of NEMA.

<sup>171</sup> See article 6 and 20 of the Convention (CCD).

(MBO).<sup>172</sup> The MBO is a programme which brings together civil society actors considered as important drivers in the implementation of the CCD. As Nel and du Plessis<sup>173</sup> contend, ‘the management by outsiders empowers civil society actors in issues on environmental protection’.

Nevertheless, it is clear that, unlike with other framework legislation, NEMA failed to make explicit how the different authorities are to make use of power, recognizing their limitations for environmental protection. This could be a potential issue in creating conflicts of authority among administrators.<sup>174</sup> Thus, even though NEMA is an important framework legislation as indicated above, a framework within which specific environmental instruments can be established, some of its provisions such as the one concerning the lack of clarity on the limits of administrative power remain problematic for sound environmental governance. Thus, in situations where power is over used because of the failure for the Act to provide administrative limitation, it is at the expense of environmental protection. This is because, priority could be given to developmental projects without considering the need to protect the environment.

Projects put into place for ensuring sustainable land management practices and poverty eradication, as mentioned above, include the Working for Water Programme, Land Care and Working for Fire amongst others, which relate to the key elements of the NAP with regard to what South Africa proposes to do for implementing the Convention. These programmes, and other relevant laws and policies which serve as instruments to ensure sound implementation of the CCD, will be analysed in turn below.

### **3.8 The Working for Water Programme (WFWP)<sup>175</sup>**

The Working for Water Programme (WFWP) in South Africa aims at eradicating the alien invasive species which have exacerbated the water crisis the country is currently facing.<sup>176</sup> The

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<sup>172</sup> See J Nel and W du Plessis “*An Evaluation of NEMA Based on a Generic Framework for Environmental Framework Legislation*” (2001) *SAJELP* at 8.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

<sup>175</sup> The Working for Water Programme officially became operational in September 1995

<sup>176</sup> See J.A Binns, et al. “Water Shortage, Deforestation and Development: South Africa’s Working for Water Programme” Vol 12, issue 4 (2001) available at <http://onlinelibrary.wiley.com> (accessed on February 20, 2013).

programme is coordinated by three government departments to enhance collaboration among other government spheres, and to guarantee water security.<sup>177</sup> The programme involves the local communities in its activities, which are not only limited to the eradication of alien and invasive species in water bodies, but also serve as a source of employment to many South Africans especially those in the rural areas.<sup>178</sup> Thus, the action by the WFWP aims at rural poverty alleviation, while taking into consideration environmental protection which is in line with the objectives of the UNCCD and the Millennium Development Goals (MDGs).<sup>179</sup> Under the WFWP, local actors working to eradicate alien invasive species have been trained in about “300 of the projects carried out across the country”.<sup>180</sup> It is fair to say that great success was achieved by the programme. Binns<sup>181</sup> concludes that much of the available water in the country which is consumed by alien and invasive species has now been channeled for use to different sectors which are in need of water, so the action by the WFWP meets the need of the current water problem.

In addition, according to the 2004 Annual Report, as a result of the training received by local community actors working to preserve water resources from contamination, about half of the extensive land which had formerly been invaded by alien species have been rehabilitated making them suitable for agricultural production.<sup>182</sup> Furthermore, job creation for poverty alleviation among the rural masses living close to water catchment areas as one of the key objectives of the focused areas of the NAP, have also seen a dramatic increase since the programme WFW became operational.<sup>183</sup>

Nevertheless, some commentators are of the opinion that more still needs to be done, to improve on the livelihoods of rural poor in particular, and the rest of the citizens who in some cases earn a

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<sup>177</sup> Ibid. These departments are the Department of Water Affairs (DWAF), the Department of Environmental Affairs formerly (DEAT) and DOA.

<sup>178</sup> See K Muller “Environmental Governance in South Africa” in Strydom and King (ed) Fuggle and Rabies Environmental Management in South Africa (2009) at 84.

<sup>179</sup> The Millennium Development Goals 1 and 7 which relates to eradicating extreme poverty and to ensure for environmental sustainability available at <http://www.un.org/millenniumgoals> (accessed on November 20, 2013).

<sup>180</sup> Ibid. See also WFW 2003/2004 working for Water Programme Annual Report 2003-2004 available at [http://www.dwaf.gov.za/wfw/Annual Reports/Achieves/2003-2004/Default.asp](http://www.dwaf.gov.za/wfw/Annual%20Reports/Achieves/2003-2004/Default.asp) (accessed on March 14, 2003).

<sup>181</sup> See Binns (n 176) above at 348.

<sup>182</sup> Working for Water (2004) Annual Report 2003/04 available at <http://www.program/instal/wfw.unep.org> (accessed on March 14, 2013).

<sup>183</sup> Ibid at 32.

meager daily wage of Rand 30 from working with the WFWP.<sup>184</sup> Muller recommends the moving of staff who have been consolidated at its head-quarters, to regional offices in the country so as to extend the programme nationwide and create greater awareness amongst local communities.<sup>185</sup> However, when one looks carefully at the report card of the WFWP, it can be concluded that the initiative is delivering socio-economic and ecological benefits. This is because not only has the programme provided for employment in order to alleviate poverty among South Africans living in areas affected by land degradation, but as suggested by Kotze,<sup>186</sup> the programme has also created strong civil society engagement in the protection of water catchments.<sup>187</sup> The programme has been greatly appreciated by community inhabitants as a source to uplift them from poverty, which is one of the objectives of the UNCCD.

Perhaps the reason why even the former United States Secretary for the Interior, Bruce Babbitt lauded the initiative to the former South African minister Kadar Asmal that, “the working for water programme is the world’s leading initiative to combat invading alien plants”.<sup>188</sup> Finally, because of the successes of the WFWP, there was an increase in the programme’s budget which according to statistic, the budget which stood at about “R25 million when the programme got established, and increased to R442 million in the year 2003/2004.”<sup>189</sup> Thus, showing that the programme’s success in helping to eradicate extreme poverty and ensuring for environmental sustainability was acknowledged, which led to the increase in its budget. Moreover, civil society organizations’ (CSOs) as eluded by the Convention are key partners for the development and implementation of NAPs. Thus, South Africa’s national action programmes creates a link with rural communities through CSOs such as the EMG, which is presented to the Convention’s secretariat as a partner in ensuring sustainable land management practices in rural communities. Moreover, the EMG will form the base of evaluation of South Africa’s NAP in the discussion below.

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<sup>184</sup>See Binns (n 176) at 349.

<sup>185</sup> See Muller (n 176) above at 85. The author states that, the programme is managed with a relatively lean staff complement mostly based at head office, but with a regional office presence structured in terms of implementation, partnership, strategic and corporate service branches”.

<sup>186</sup> P Kotze “*Taking back the ‘lost’ wetland (date?)* *Journal of wetland management: the September/October 2011 at 10.*

<sup>187</sup> Ibid, a case in point is the Verlorenvlei Water catchment.

<sup>188</sup> See Binns et al. (n 176) at 344. See also working for Water Programme (2000b) Annual Report 1999/2000 Cape Town.

<sup>189</sup> Binns Ibid.



### 3.9 South Africa's Environmental Monitoring Group (EMG)<sup>190</sup>

The South Africa's EMG is a civil society organization accredited to the NAP which aims at enhancing the implementation of the UNCCD through creating direct links with rural communities of South Africa. The organization's programmes are focused on four areas of concern.<sup>191</sup> These four areas include rural development, water, climate change and fair trade. Among these programmes, the rural development schemes have imparted skills to local farmer groups, through capacity building training which brings together small farming groups to share their knowledge of methods that could improve their farming skills and increase crop productivity through sustainable land management practices. Thus, according to Arendse,<sup>192</sup> this programme is a clear example of the bottom-up approach required by the Convention for its implementation. This is because the programme serves as a platform that brings together rural, small and large scale rooibos tea farmers, to discuss how they could increase their productivity and add value to their products in order to meet the market trend and in order to have a strong bargaining force in periods of price fluctuation.<sup>193</sup> The EMG programme has successfully carried out scientific research in the Suid Bokkeveld, Wupperthal among other areas on the prevention of soil erosion and the eradication of alien species of vegetation.<sup>194</sup> The Worldwide Fund for Nature property for biodiversity conservation, purchased at the plateau of Bokkeveld, has also been under the management of the EMG since 2008.<sup>195</sup>

In addition, working in line with one of the requirements of the UNCCD for parties to create effective partnerships which focus on SLM programmes, the EMG through its Drynet initiative

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<sup>190</sup> South Africa's Environmental Group available at [www.http://www.emg.org.za](http://www.emg.org.za) (accessed on November 20, 2013).

<sup>191</sup> These four areas include; Rural Development, Water and Climate Change, Climate Change and Fair Trade available at <http://www.emg.org.za/programmes> (accessed on November 20, 2013).

<sup>192</sup> A. Arendse "Trade, Environment and Sustainable Development" available at [http://www.emg.org.za/images/download/publications/rooibos\\_tea\\_and\\_small-scale\\_production.pdf](http://www.emg.org.za/images/download/publications/rooibos_tea_and_small-scale_production.pdf) (accessed on November 15, 2013).

<sup>193</sup> Ibid at p. 11.

<sup>194</sup> O Noel "Knowledge and UNCCD: The Community Exchange and Training Programme" (2006) available at <http://www.emg.org.za/programmes/rural-development> (accessed on November 15, 2013).

<sup>195</sup> The WWF Avontuur biodiversity conservation property available at <http://avontuur.org.za> (accessed on November 15, 2013).

programme<sup>196</sup> has secured an effective partnership with the World Overview of Conservation Approaches and Technologies (WOCAT).<sup>197</sup> This partnership is aimed, at providing sound scientific data analysis on sustainable land management projects in South Africa. Furthermore, the development initiatives of the EMG are described as ‘a vehicle for sustainable local development’ which meets the needs of rural communities of South Africa. This can be seen in the EMG joint support project with the Heiveld Cooperative of South Africa.<sup>198</sup>

This project has secured a market for the rooibos tea production in Europe and other parts of the world. This is aimed at ensuring for a fair export trade for the production of the rooibos tea, in order to enable the local farmers reap the benefits by alleviating poverty among the rural masses which is one of the objectives of the NAP. A further earmarked sustainable land management and poverty eradication programme in the South African NAP is the Land Care programme which will be discussed in the paragraphs below.

### **3.10 The Land Care Project of South Africa<sup>199</sup>**

The Land Care project of South Africa, is considered as one of the “flagship programme for community based land management related to the UNCCD implementation”.<sup>200</sup> The programme aims at engaging the local communities, particularly, areas faced with land degradation, in developmental projects which enhances their capacity, alleviate poverty, and encourages sound land management practices, the provision of small grants amongst others.<sup>201</sup> The Land Care Project through partnership agreement with the government of Australia has received financial

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<sup>196</sup> Drynet: “A global initiative giving future to drylands” available at <http://www.dry-net.org> No. 12 September 2013 (accessed on November 17, 2013).

<sup>197</sup> The World Overview of Conservation Approaches and Technologies hereinafter referred to as (WOCAT), is one of the World’s leading organisation with over twenty years of work experience on presenting data on sustainable land management projects across the globe.

<sup>198</sup> The Heiveld Cooperative-South Africa is a cooperative which is involved in ensuring for a sustainable agriculture in the Western Cape Province of South Africa to boost the increase in rooibos production available at <http://www.dry-net.org/index.php?page=3&success> (accessed on November 17, 2013).

<sup>199</sup> The South African National Land Care Programme official site available at <http://www.daff.gov.za/docs/Landcare/landsmall.htm> (accessed on November 18, 2013).

<sup>200</sup> The Land Care programme of South Africa submitted to the UNCCD Reporting and Assessment platform as a programme in the NAP aiming at implementing the Convention available at <http://www.unccd.int/en/programmes/Reporting-review-and-assessment> (accessed on November 18, 2013).

<sup>201</sup> See the South African Land Care (n181) above.

support worth over 1.3 million Australian dollars to enhance the programme's work in rural areas.<sup>202</sup> Benjaminsen et al,<sup>203</sup> point out that the Land Care programme has carried out projects aimed at protecting natural resources in the Namaqualand Nature Reserve<sup>204</sup> which have preserved the over 3500 plant species in the entire Karoo biome and improved on the living conditions of the local farmers, by increasing crop production through the introduction of SLM practices.<sup>205</sup> This is despite ongoing challenges in the access to farming land by some communities around the Namaqualand nature reserve, such as the Soebatsfontein locality, and the ongoing problem of soil erosion.<sup>206</sup> Ntlokwana,<sup>207</sup> also comments positively on the work of the Land care programme, noting that, in the principal four areas in which it is involved,<sup>208</sup> the programme has secured enormous success in ensuring the implementation of sustainable land management practices and poverty eradication through job creation particularly for women and youths. Thus, the programme has successfully reduced the estimated 70 per cent of the entire land under degradation in the country to about 55 per cent.<sup>209</sup>

Furthermore, the report of 2012 to the UNCCD Secretariat submission and project assessment platform<sup>210</sup> on South Africa, indicates positive measures with enormous successes recorded by the Land Care programme with contributions from other government policy programmes such as the War on Poverty-A Better Life for All, the Integrated Sustainable Rural Development Strategy, the Urban Renewal Programme and the Reconstruction and Development Programme amongst others. These programmes have instituted projects in rural communities in South Africa which have alleviated poverty and combated land degradation by implementing agricultural

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<sup>202</sup> Ibid. This financial support was provided to the Land Care programme during the 2000/2001, 2001/2002 financial years respectively.

<sup>203</sup> T. A. Benjaminsen et al. "Between Global Interests and Local Needs: Conservation and Land Reform in Namaqualand, South Africa" *Africa: Cambridge Journal* vol 78, issue 2 (2008).

<sup>204</sup> The Namaqualand is described as a semi-arid region found in the Northern Cape Province of South Africa, and it is referred to as one of the only two existing dry land biodiversity hot spots in the world with about 3,500 plant species.

<sup>205</sup> See Benjaminsen et al. (n185) at p. 224.

<sup>206</sup> Ibid at p. 232.

<sup>207</sup> M Ntlokwana "Brief Overview of Land Care Programme in South Africa: Department of Agriculture, Forestry and Fisheries" (2011) available at <http://www.unccd.int/en/programmes/Event-and-campaign/Land-Day5> (accessed on November 20, 2013).

<sup>208</sup> The four areas which the Land Care programme is focused on includes; the Veld Care, Water Care, Soil Care and the Junior Land Care.

<sup>209</sup> See Ntlokwana (n189) above.

<sup>210</sup> See the UNCCD Report and Project Assessment Platform (n182) above.

practices which have facilitated sustainable land management. Furthermore, as indicated in the NAP of South Africa, legislation in different ministerial departments are also important instruments that guides the programmes established, to meet the NAPs objectives.

Thus, in the discussion below, focus will be given to the analysis of the legislative and policy mechanisms, which relates to the priority areas mentioned in the NAP, to facilitate the implementation of the NAP's objectives. These areas include; the protection of the forests, implementing a reliable Environmental Impact Assessment Regime (EIA), land use and planning among others.

### **3.11 The National Forests Act 84 of 1998<sup>211</sup>**

The administration of forest and trees in South Africa is currently governed by the state at the national level because of the important role they play in the South African economy.<sup>212</sup> Also, present statistics show that in the past, South Africa could boast of a large amount of natural forest, but today, it is left with just a small portion of natural forest. The reason for the disappearance of the forest is attributed to the heavy illegal exploitation in the sector with little or no serious regulation during the nineteenth century.<sup>213</sup> For example, estimates show that indigenous woodlands<sup>214</sup> in South Africa cover a surface area of about 315 000 square kilometers. However, this estimation according to scholars somewhat fall short to that what entailed in the “pre-colonial” era, which stood at about 400 000 square kilometers.<sup>215</sup> The National Forests Act is one of the many South African NAP which aims at implementing the CCD. According to the provisions of section 3 sub (3) (v) of the NFA, it is clear that, ‘forests must be developed and managed so as to conserve natural resources, especially soil and water’.<sup>216</sup> The Act repealed the former Forests Act 122 of 1984.<sup>217</sup> The National Forests Act

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<sup>211</sup> Act 84 of 1998 (hereinafter referred to as the National Forests Act).

<sup>212</sup> J. Glazewski “Environmental law in South Africa” 2 ed (2005) 372.

<sup>213</sup> *Ibid* at 384.

<sup>214</sup> Scholes “Woodlands of South Africa” in Lawes, Esley, Shackleton and Geach ed, *Indigenous Forest and Woodlands in South Africa: Policy, people and practice* (2004), defines woodlands as, “vegetation formation dominated by tress but not to the extent that the canopies are contiguous”.

<sup>215</sup> *Ibid*.

<sup>216</sup> *Ibid* Section 3 (3) (V).

<sup>217</sup> Act 122 of 1984 (hereinafter referred as the Forests Act).

encourages a bottom up approach as recommended by the Convention, because it creates a platform for local communities to enter into agreements with the government on different ways to sustainably conserve and make use of the forest and forest products.<sup>218</sup> According to the Act (NFA), any activity such as herding, grazing or the use of the forest for other purposes on land owned by the state must be carried out only by those with valid licenses issued by the state granting them such authority to operate in such activities in the forestry sector.<sup>219</sup>

The National Forests Act was enacted along-side the White Paper on Sustainable Use of South Africa's Biological Diversity.<sup>220</sup> The South African White Paper on Sustainable Forest Development (1996) is a policy document which clearly outlined various measures on how to obtain the sustainable management of the country's forests and forests products. Furthermore, the Act stresses the need for various sustainable forest management projects that will benefit the entire citizens of the country especially those in local communities who live around forest areas, thus laying down specific guidelines on the protection of the forests and forest products.<sup>221</sup> The efficiency of the Forests Act as an instrument to guide the implementation of the NAP will be assessed below.

Firstly, the 1996 Forest White Paper is considered as a policy document that underpins South Africa's commitment to a sustainable forest management, has received criticism as a policy good only on paper but not in actual implementation. This is because the country is still facing massive challenges in the protection of its forest and forest products against illegal exploitation.<sup>222</sup> Regarding the issue of community participation in forest management, some commentators like Watts,<sup>223</sup> are of the opinion that local communities living adjacent to the forests are not in most cases represented in policy issues on the management of the country's

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<sup>218</sup> See (n 103) Section 29. See also GGNo.20897 of February 25, 2000.

<sup>219</sup> Ibid (NFA) Section 23. Also, a license for this purpose could only be issued for a time period not more than ten years according to Section 24 of the Act. See also full discussion on this in (n 89) Fuggle and Rabie's at 335.

<sup>220</sup> The Department of Water Affairs, Agriculture, Forestry and Fisheries in May 2009 (hereafter referred as the Forest White Paper)

<sup>221</sup> The Forest Act Chapter 2. Also, the Act (NFA) defines trees in section 1(xxxvi) as, "any tree seedling, sapling, transplant or Coppice shoot of any age and any root, branch or other part of it".

<sup>222</sup> Forest products according to the Act, refers to "anything which appears or grows in a forest including living organisms, any products of it and inanimate objects of mineral, historical, anthropological, or cultural value". See also Glazewski (n 212) above at 387.

<sup>223</sup> See S. Watts "Strategic Development in Natural Forest Conservation in South Africa" (2006) Journal of Sustainable Forestry at 26.

forests. Watts contends that, “many South Africans considered to be poor living in rural areas, perceive democracy to mean uncontrolled access to natural resources and harvesting as much as one deems sustainable”.<sup>224</sup> Such poor conduct as suggested by Watts on the part, of the local communities living close to forest areas disrupts efforts put in place by the government and other environmentally friendly citizens for a sound forest management.

Despite the aforementioned short-comings of the Act, the Act on the other hand, has successfully established some long term programmes aimed at effective forest management. Under the Act as government action, training centers on forest management to both professionals and those living in forest areas have been instituted. These centers enable capacity building and the training of forestry technicians, thereby enhancing the performance of the DWAF.<sup>225</sup> These are effective long term scientific measures put in place by the South African government to implement the CCD.

A second aspect of the Act which has achieved progress in the role given to locals in forest management, is the provision of incentives to local forests inhabitants. In order to effectively partner and involve the local population in the management of forest, woodland and sustainable land management in the forestry sector, the NFA states that, whenever someone aids or enables the discovery of evidence which leads to the conviction of an offender against forest laws, such a person should be compensated with “one quarter of the fine charged to the offender”.<sup>226</sup> This incentive in implication motivates forest dwellers to contribute to the sustainable management of the forest and forest products. The Act takes into consideration the importance of engaging the local population in forest management to implement the CCD. Also, it is worth noting that, the Forest Act is flexible even in its monetary sanctions to act as a deterrent to illegal forest exploiters. Thus, Watts commends South Africa as the only country in Southern Africa, whose forestry law requires the adjustment of fines, to take into account prevailing rates of inflation, to remain deterrent”.<sup>227</sup>

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<sup>224</sup> Ibid.

<sup>225</sup> See the University of Stellenbosch centre for forestry training, the University of Kwazulu Natal faculty of Agricultural Science in corporation with the Institute of Natural Resources in Pietermaritzburg, are among the forestry training centres in South Africa.

<sup>226</sup> See Watts (n 223) above.

<sup>227</sup> Ibid at 98.

To conclude, it is worthy to note that in a country like South Africa, which is rich in biodiversity, forest laws cannot be implemented successfully in isolation. This is because, other government policies are multi-sectorial and this has to be taken into consideration for any successful implementation of forestry legislations. A case in point is the issue of chronic diseases like the HIV/Aids<sup>228</sup> pandemic, which affects the country's rural population. With the backdrop of the prevalence of the illness, the management of the country's forest can also be affected in many ways. Firstly, there may be a reduction in the capacity of the local population to assist the government towards a sustainable forest management because at the time of writing no cure for this ailment has been discovered. Secondly, with the prevalence of HIV, the forest may be over exploited by the "sick" local population in the search of herbs and bark of trees, among other things, as solutions to their health problems in an un-organized manner. This will certainly present a severe problem to the forest ecosystem. In addition, it is important to note that estimates show that about 18 percent of the entire rural population in South Africa living in forest areas, are either infected or affected by the HIV/AIDS pandemic.<sup>229</sup>

This point links with the fact that about 27 million South Africans depend largely on the forest and forest products for purposes of "traditional medicines and other cultural and spiritual values".<sup>230</sup> Therefore, it is important for policy makers to take into account other "crosscutting policy" issues while implementing laws on sustainable forest and woodland management as the country's National Action Programme to implement the CCD.

### **3.12 South Africa's Water Laws**

Even though there had been former water laws in the country, such as the 1956 Water Act,<sup>231</sup> for the purpose of this study, only water laws which were established after South Africa became a signatory to the UNCCD will be evaluated in this section. This is because the various regulations in the post-apartheid South African water sector will allow for an evaluation of how

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<sup>228</sup> The Human Immune Virus or the Acquired Immune Deficiency Syndrome (hereinafter HIV/AIDS).

<sup>229</sup> C.M. Shackleton et al, "The importance of dry woodlands and Forests in rural livelihoods and Poverty alleviation in South Africa" *Journal of Forest Policy and Economics* Vol, 9 (2007).

<sup>230</sup> Ibid.

<sup>231</sup> Act 54 of 1956, layed a solid foundation in the Country's water sector which till date in some instances, continue to be used in some water boards across the country.

the government aims to implement the Convention in this area, especially as the Convention is concerned primarily with dry land areas running short of water.

### **3.12.1 The National Water Act 36 of 1998 NWA<sup>232</sup>**

Water regulation and distribution during the apartheid era was managed by water regulations that were discriminatory.<sup>233</sup> And thus a vast majority of the country's population did not have access to water.<sup>234</sup> However, the new democratic South Africa has been determined to restructure the inequality which existed within the water sector. As a result of the water crisis in the country which required a sound regulatory instrument, a new water law, the National Water Act (NWA),<sup>235</sup> was established. The NWA has as one of its objectives to ensure the "achievement of equality in the access to water resources and also to ensure a sustainable utilization". Moreover, the Constitution in its section 27 (1) (b), provides clearly for the guarantee of the right to access to water resources for all South African citizens. The Act came into existence, thanks to the "White Paper on National Water Policy for South Africa,"<sup>236</sup> which outlined various issues plaguing water governance in the country. The NWA, has been widely considered as "ground breaking" machinery to secure successful water resources management in South Africa.<sup>237</sup> The Act, apart from guaranteeing access to water resources to all South African citizens, also the objective of, upholding the integrity of the environment.<sup>238</sup> The DWAF,<sup>239</sup> is the authority empowered to oversee water resources in the country.<sup>240</sup> Under the NWA, structures aimed at facilitating the implementation, have been established. These include the Catchment Management Strategy<sup>241</sup> operated in relation with the National Water Resources Strategy.<sup>242</sup>

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<sup>232</sup> See (n 134) above.

<sup>233</sup> See M. Nastar, V Ramasar "Transition in South African water governance: Insights from a perspective on Power" (2012) vol. 4 Journal of Environmental Innovation and Societal Transition.

<sup>234</sup> Ibid.

<sup>235</sup> Act 36 of 1998 (hereinafter referred as the NWA).

<sup>236</sup> See the Department of Water Affairs and Forestry (hereinafter referred to as DWAF) 1997.

<sup>237</sup> See S Perret "Water Policies and Small-holding Schemes in South Africa: a history and new institutional challenges". The Department of Agricultural Economics, Extension and Rural Development, University of Pretoria (Working Paper :) issue 200.

<sup>238</sup> Ibid at 9.

<sup>239</sup> See DWAF (n236) above.

<sup>240</sup> Ibid.

<sup>241</sup> The Catchment Management Strategy (hereinafter referred to as CMS) regulated by chapter 7 of the Act (NWA).

<sup>242</sup> The National Water Resources Strategy (hereinafter referred to as NWRS) in DWAF 2004.



Thus, for the sake of clarity and the completeness, the NWA will be evaluated in relation to these structures.

### **3.12.2 The National Water Resources Strategy (NWRS)<sup>243</sup>**

The National Water Resource Strategy was established with the aim of providing a foundation for a strategic approach in the management of water resources in the whole of South Africa. The Act operates in conjunction with “chapter 2 of the National Water Act”.<sup>244</sup> The strategy was, among other things, set up to cover the three segments of water resources in South Africa. In addition, it deals with issues of equitable distribution of water resources and their sustainable utilization by all users taking into consideration other socio-economic advantages which may accrue from its utilization.<sup>245</sup> Also, according to the NWA, the strategy is responsible for setting up: the strategies, objectives, plans, guidelines and procedures of the minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing relevant government policy.<sup>246</sup>

The water strategy has been widely considered as a unique approach which aims at addressing a number of water related issues which include the creation of water reserve, and the establishment of water management sites in the country.<sup>247</sup> The NWRS has established nineteen “water management areas in South Africa,” to ensure the continuous water flow in an attempt to meet the needs of millions of the country’s citizens who are unable to freely access this precious commodity.<sup>248</sup> Kidd<sup>249</sup> argues that the issue of creating reserves is the most important element of the NWA.

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<sup>243</sup> Ibid. The NWRS was published in 2004.

<sup>244</sup> See section 5 and 6 of NWA.

<sup>245</sup> See (n 143) at 7.

<sup>246</sup> See section 6(1) (a) of the Act (NWA). See also Kidd (n 163) above at 75.

<sup>247</sup> See Kidd (n 163) above at 76.

<sup>248</sup> See (n 139) above. According to the White Paper on a National Water Policy for South Africa, from the estimated 40 million South Africans (as per the 1997 population estimate), about 12-14 million of this population were unable to access water. See also Kidd (n 102) above at 73 for further discussion on this.

<sup>249</sup> See Kidd (n 163) at 76.

Regarding the availability of mechanisms and proper management of water resources as a prerequisite for combating desertification and to mitigate the impact of drought, the NWRS is an instrument under the NWA which arguably serves as an instrument for ensuring that the obligations of the NAP are met and that the Convention is implemented. It is a credible tool for the equitable use and management of water resources to all citizens because the strategy introduces water reserves as a long-term strategy for a sustainable exploitation of water resources that take into account socio-economic requirements like the functioning of agro-industries needing water for their operations, thus, providing jobs for many South Africans and contributing to poverty alleviation while preserving the environment.<sup>250</sup>

An environmental instrument like the NWRS can only be considered as a suitable tool to evaluate a country's ability to implement tools for ensuring sustainable water resources management only when its applicability is wide enough to cover every aspect within the water sector of the country, it can be claimed that the NWRS, has this wider scope of coverage, which includes inter alia, regulating wetlands and ground water resources.<sup>251</sup> In addition, both the Resources Quality Objectives (RQO) and the National Water Resource Classification Systems (NWRCS)<sup>252</sup> created under the NWA are effective tools which provide a holistic approach to the management and regulation of water resources in an integrated fashion in the country.<sup>253</sup>

In addition, under the auspices of the NWRS, the “National Water Conservation WC and Demand Management WDM<sup>254</sup> strategies” have been created. These instruments are important because they operate in conformity with the strategy (NWRS) and have facilitated the efficient use of water resources in all areas of demand in the country.<sup>255</sup>

Given the importance of information dissemination and the involvement of local communities as partners in the fight against desertification and to mitigate the impact of drought, the (DWAF)

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<sup>250</sup> See Glazewski (n 212) above at 445.

<sup>251</sup> See Glazewski (n 212) at 445.

<sup>252</sup> The National Water Resource Classification System (hereinafter referred to as NWRCS) and the Resource Quality Objectives (RQOs) are structures under the NWA.

<sup>253</sup> See N. A King, et al. “Fresh Water Systems” in H A Strydom and King's (ed), Fuggle and Rabbie “Environmental Management in South Africa” (2009) 446.

<sup>254</sup> See Fresh Water Country Profile: South Africa.

<sup>255</sup> Ibid.

the authority governing water resources in South Africa, has instituted programmes which aim at facilitating information flow to the local population on measures to effectively manage water resources in the country.<sup>256</sup> This initiative of keeping local communities informed regarding the efficient management of water resources is be a laudable one, which enhances capacity building, a necessity for implementing the CCD.

However, despite the aforementioned actions of the NWRS under the DWAF, which, because of the programmes established, appear to be positive in the implementation of the Convention, some short-comings have been identified. The NWRS fails to provide clarification on particular timelines for how the various proposed actions are to be implemented, thus making it difficult to assess implementation.<sup>257</sup> Kidd<sup>258</sup> points out as a shortcoming of the Strategy that “timeframes are supposed to be indicative rather than rigid”.

Nevertheless, it was against the back drop of the NWRS that the new National Water Resource Strategy NWRS2 was established.<sup>259</sup> The NWRS2 provides a framework which sets a road map for the implementation of the objectives of the National Water Act and for a sustainable management of the country’s<sup>260</sup> water resources within a 20 year time frame. The NWRS2, in accordance with the Vision 2030 of the National Planning Commission,<sup>261</sup> aims at providing water resources to South Africans in a short term strategic action plan from 2013 to 2017.<sup>262</sup> The new NWRS2 is established, to put in place strategies which attempt to reconcile the on-going problem of water demand and supply in the country.

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<sup>256</sup> Ibid.

<sup>257</sup> See part 7 of (DWAF). See also part 8 of NWA which is titled “Anticipated Programme of Implementation activities”.

<sup>258</sup> See Kidd (n 163) above at 85.

<sup>259</sup> The New Water Resources Strategy (hereinafter referred to as NWRS-2) by the Minister of Water Affairs on July 3, 2013 available at <http://www.info.gov.za/views/DownloadFileAction?id=173116> (accessed on July 7, 2013).

<sup>260</sup> Ibid.

<sup>261</sup> The South African National Planning Commission Vision 2030 which has as one of its objectives, the creation of about 11 million jobs by the year 2030 available at <http://cer.org.za/wp-content/uploads/2013/07/NWRS2-Final-email-version.pdf> (accessed on July 7, 2013).

<sup>262</sup> See the New Water Resources Strategy (n165) above.

The NWRS2, according to the Minister for Water Affairs, states that,<sup>263</sup> “Equity and redistribution will be achieved through the authorization process and other mechanisms and programmes, such as water allocation reform, financial support to emerging farmers and support to urban and rural economic development initiatives,”<sup>264</sup> which if fully executed as proposed, will substantially give effect to the implementation of the CCD. This is because, access to water resources in an equitable and sustainable manner to all South African citizens will reduce rural poverty and strengthen environmental protection. Unfortunately, water services in most areas in South Africa have been privatized making it difficult for many people especially the poor in rural communities, to easily access water for basic consumption, which have been considered by commentators as infringing their fundamental Human Rights.<sup>265</sup> The discussion below is of the Water Catchment Management Agencies.

### **3.12.3 The Catchment Management Agencies<sup>266</sup>**

Catchment Management Agencies are important tools for eradicating poverty and the empowerment of local community inhabitants, who generally suffer the most from the adverse effects of water scarcity, as a result of drought in South Africa.<sup>267</sup> Thus, as elucidated by Schreiner and Koppen, Catchment Management Agencies (CMAs) “are the most proper media to implement all aspects of the NWA Act”.<sup>268</sup> The CMAs play an important role in the management of water resources in the country. They are responsible for the evaluation and the granting of water permits, as well as the authorization and registration of prospective operators within the water sector. The CMAs also take into consideration the aspect of “public participation” which represents the bottom-up approach of corporative governance within the water catchment agencies recommended by the CCD.

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<sup>263</sup> The Minister for Water Affairs Edna Molewa in a Press briefing after she launches the new NWRS2 available at <http://www.engineeringnews.co.za/article/molewa-launches-final-second-national-water-resources-strategy-2013> (accessed on July 7, 2013).

<sup>264</sup> Ibid.

<sup>265</sup> See Danwood Mzikenge Chirwa: “Privatisation of water in Southern Africa: A human rights perspective” (2004) 4, vol. 218 *Journal of African Human Rights Law*. See also, *Mazibuko v City of Johannesburg* Unreported Case No. 06/13865 (W).

<sup>266</sup> See (n142) above.

<sup>267</sup> See B .Schreiner, B Van Koppen “Catchment Management Agencies for poverty eradication in South Africa” (2007) vol. 27 *Journal of Physics and Chemistry of the Earth*.

<sup>268</sup> Ibid at 972.

However, there are two principal questions which may be asked, namely, “if the issue of public participation is actually put into practice or if it is merely mentioned on paper”. The other question is whether, the functions of the DWAF has been successfully transferred to the CMAs to enable them effectively manage the 19 water management catchment areas in the country?

It should be noted that elements of public participation were visible during the setting up of the CMA.<sup>269</sup> Under the auspices of DWAF, consultative meetings were organized where some local community representatives provided their opinion on how water resources could be effectively managed.<sup>270</sup> During the second and third phases of the DWAF organized public participation, it was noticed that participation was not just limited to information dissemination, but the meeting brought together all stake holders including “high volume water users who can afford to pay the price”,<sup>271</sup> and also the poor lacking water to drink.<sup>272</sup> However, it has been claimed that attendance at the so-called consultative forums were limited and the timeframe for the issuing of notifications did not allow for adequate preparation because it was short and hence affected participants negatively.<sup>273</sup> In addressing the second question, it could be said that management of the country’s catchment areas have not been fully transferred from the DWAF to the CMA for sound management of water resources. This is evidenced by the fact that a reasonable number of the water management areas fall short of their required expectation.

As Kidd asserts, “ten out of the nineteen water management areas (WMA) were in deficit”.<sup>274</sup> The deficit here refers to the inability of water supply to meet demand and not necessarily a fall in what is expected from management performance, even though it would be fair to also suggest that the gap between demand and supply could be closed through equitable distribution of water resources, which is a managerial issue.

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<sup>269</sup> Ibid.

<sup>270</sup> Ibid. About 600-700 participants from the local communities were in attendance for consultation leading to the formation of the CMA’s.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid at 973.

<sup>274</sup> See Kidd (n 163) above at 68. The author explains that the area of Inkomati for example, was in deficit of about 258 million M 3/a.

Moreover, section 3 of the Water Services Act<sup>275</sup> in its Regulation 3 requires the Minister to place a notice on the minimum standard of basic water consumption. This standard stands at “25 liters per person per day of portable water or 6 kilo liters per household per month”<sup>276</sup> as a measure of conserving and making available in a sustainable manner, water resources, to all South African citizens. However, recent statistics presented by DWAF on basic water distribution to the poor disadvantaged South Africans,<sup>277</sup> indicates a drop in the percentage as compared to previous estimates,<sup>278</sup> indicating a failure to meet with the requirements under section 27 of the Constitution of the Republic of South Africa. It is also possible that the national regulation on water consumption should be revised because those demanding water in the agricultural sector will certainly be needing more than the amount stipulated for consumption.

The South African government is working in partnership with other non-governmental organizations (NGOs) and civil society actors like the Working for Water to ensure a sustainable water resources management in the country. The discussion below will focus on the legal and policies governing the mining operations in South Africa.

Mining activities are of importance to the South African economy and also contributes to land degradation and are stated in the NAP as a priority area for implementing the Convention. Thus, the discussion that follows will focus on mining legislations acting as a guide to meeting the NAP objectives.

### **3.13 The Legal Framework Governing Mining Operations in South Africa**

South Africa has a well-known reputation for its mining activities and there are different forms of mining operations.<sup>279</sup> The mining sector is an important source for the country’s revenue. However, mining operations, especially acid drainage mining, is one of the many human

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<sup>275</sup> The Water Services Act 108 of 1997. The Act gives effects to S. 27 of the 1996 Constitution of the Republic of South Africa on the right to access to all on basic sanitation and water supply.

<sup>276</sup> See Kidd (163) above at 82.

<sup>277</sup> DWAF (February 28, 2013) page on free basic water stands at a total of about 79.84% of water supply to poor households, available at [http://www.dwaf.gov.za/d\\_dir\\_ws/fbw](http://www.dwaf.gov.za/d_dir_ws/fbw) (accessed on March 13, 2013).

<sup>278</sup> See Kidd (163) 78. The author explains that as per the statistics of April 30<sup>th</sup> 2011, over 86 percent of above 13 households were provided with free basic water.

<sup>279</sup> These include; surface mining, shallow underground mining, deep underground mining and offshore mining. See Glazewski (n 117) above with Kerry Liebenberg at 453-56.

activities in South Africa which pose severe harm to the environment and human health and requires well considered actions.<sup>280</sup> It also contributes to land degradation and is stated in the NAP as a priority area for implementing the Convention in South Africa. Thus, the discussion that follows will focus on the Mineral and Petroleum Resources Development Act (MPRDA) acting as a guide to meeting the NAP objectives. It will be limited to the legal framework which governs mining operations and what measures have been taken to ensure the protection of the environment from degradation. Mining activities in South Africa are regulated by the MPRDA.<sup>281</sup> Analyses of this Act will be presented to evaluate how the Act regulates mining activities to ensure for SLM in the country.

### **3.13.1 The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA)<sup>282</sup>**

The Mineral and Petroleum Resources Development Act repealed the former Mineral Act.<sup>283</sup> The Act requires for everyone in possession of “mineral rights”, to provide an approved Environmental Management Plan (EMP) and also as a matter of obligation to seek consultations with any rightful land owner or occupier of the land in question where the activity is to be established. Studies have shown that the implementation of environmental legislation especially in the mining sector, could be stress-free when the definition of procedural requirements in the Act is clear, to enable easy interpretation.

The MPRDA has been described by some commentators as the most precise and only accurate mining legislation in the country, covering a plethora of mining operations unlike previous mining laws.<sup>284</sup> In addition, as Wells *et al. points out*: “mineral prospecting,<sup>285</sup> mining and petroleum exploration and production have been defined separately and fall under two different

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<sup>280</sup> Ibid.

<sup>281</sup> Act 28 of 2002 (hereinafter referred to as MPRDA).

<sup>282</sup> Ibid.

<sup>283</sup> Act 50 of 1991 (hereinafter referred to as the Mineral Act).

<sup>284</sup> See J D Wells et al. “Terrestrial Minerals” in H A Strydom and N D King (ed) Fuggle and Rabie’s Environmental Management in South Africa (2009) at 550.

<sup>285</sup> Ibid.

government departments: the Department of Mineral and Energy and the Petroleum Agency of South Africa". This breaking down of mining activities into two separate government bodies is a significant action which portrays the government's commitment to ensuring environmental protection from degradation emanating from mining activities.

Another policy document which serves as a guide-line to communicate the South African government's commitments to sound regulations within the mining sector and to environmental protection, is the White Paper on Minerals and Mining Policy for South Africa.<sup>286</sup> The importance of this policy document in the present discussion is that it provides a framework to facilitate the establishment of the MPRDA. It should also be elucidated that, the Act is aimed at ensuring sustainable development within the country's mining sector.<sup>287</sup> This falls in line with the international concept on sustainable development in what is referred to as the Brundtland Report.<sup>288</sup>

Furthermore, with regard to the issue of ownership of mineral and petroleum resources, the MPRDA provides in section 3(1) that "it is a common heritage of the people of South Africa and the state is custodian thereof".<sup>289</sup> Also, the Minister as a state actor is empowered to the issuing of mining permits, prospecting rights and the granting or refusal of these rights.<sup>290</sup> The Minister's power according to the Act has to be exercised with the fundamental motive of promoting sustainable development in the country's mineral and petroleum sectors, which respect various norms and standards.<sup>291</sup> The Act also states that all mining and prospecting activities must:

be conducted in accordance with general accepted principles of sustainable development by integrating socio-economic and environmental factors into the

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<sup>286</sup> See the Department of Minerals and Energy N2359/1998 in Government Gazette No. 19344 of October 1998.

<sup>287</sup> See JD Wells et al. (n 216) at 547. See Also Glazewski (n 117) at 459.

<sup>288</sup> See the World Commission on Environment and Development, our Common Future " According to the report, sustainable development means development that meets the needs of present without compromising the ability of future generations to meet their own needs" (the Brundtland Report) 1987. See also Glazewski (n 117) above at 562.

<sup>289</sup> Section 3(1) of the Act (MPRDA).

<sup>290</sup> Section 3(2) (a) of the Act.

<sup>291</sup> Section 37(2) of the Act.



planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.<sup>292</sup>

However, despite the regulations in the Act which indicate the government of South Africa as the “custodian” of the mineral and petroleum resources in section 3(1) mentioned above, there are still criticisms from some commentators.<sup>293</sup> According to Van den Berg, the controversial section 3(1) of the Act, has “created uncertainty regarding ownership of un-severed minerals. It is generally accepted that this section cannot mean that mineral and petroleum resources are now owned by the nation, since neither the nation nor the people of South Africa are legal subjects in either private law or public law”.<sup>294</sup>

This is despite the fact that it is necessary for the MPRDA to provide a clear understanding regarding the issue of ownership in the mining sector, not only to avoid conflicts that may generate, but also to facilitate the Act’s implementation which will also provide for environmental protection and in particular, protect land from degradation. Van den Berg claims that “this is indicative of the fact that emphasis should not be placed on the word custodian”, but rather on the power and authority which characterizes state control of mineral and petroleum resources”.<sup>295</sup>

It has also been suggested, with regard to this issue, that mineral and petroleum resources fall under the public trust doctrine.<sup>296</sup> However, this view was not supported by Dale *et al.*<sup>297</sup> According to these authors, the public trust doctrine should hold only for issues where sovereign ownership of the resource in question falls within the ambit of the state. Even other environmental instruments such as the (NEMA) and the (NWA), that also make reference to the

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<sup>292</sup> See the Acts Preamble and sections 2(d) and 2(e).

<sup>293</sup> See Badenhorst and Mostert “Mineral and Petroleum Law of South Africa service 3 of (2007), at 13-3 to 4.

<sup>294</sup> See H M Van den Berg “Ownership of Minerals under the new legislative framework for mineral resources” available at <http://www.heinonline.org/HOL/Print?handle=hein.journals>. Vol 20, (2009) 20 Stellenbosch L. Rev at 141 (accessed on March 22, 2013).

<sup>295</sup> Ibid at 145.

<sup>296</sup> See Glazewski (117) above at 468.

<sup>297</sup> See Dale et al. “South Africa Mineral and Petroleum law” at 124.

doctrine of public trust, are somewhat unclear on this issue,<sup>298</sup> because there is virtually no sovereign ownership of water resources or the environment, so to speak.

With regards to rehabilitation of former mining sites, the CCD puts emphasis on the rehabilitation of already degraded lands or those that are at risk of being degraded. Therefore the importance of land rehabilitation cannot be over emphasized, due to the fact that there is a growing concern of lands degrading continually even after a mining activity has been halted.<sup>299</sup> Kidd explains that, “in order to combat these problems effectively especially in the long term provision should be made for the rehabilitation of the affected surfaces, once mining operations finally cease”.<sup>300</sup> The question which is raised here is who is responsible for rehabilitation should it be the state or any holder of mining prospecting rights to provide an answer to this question, the MPRDA holds that as long as a certificate of closure has not been signed or issued by the Minister concerned, the mining operator concerned is responsible for any harm caused to the environment.<sup>301</sup>

Furthermore, when a mining prospecting rights holder fails to comply with the requirements for rehabilitating land degraded as a result of a mining activity, the Act provides that the Minister may use funds from Parliament to facilitate the implementation of this procedure.<sup>302</sup> Alternatively, the Act provides that the Minister may make an application to the High Court for an authority through an ex parte, to seize the properties of the non-compliant holder, and sell the properties to facilitate the rehabilitation process.<sup>303</sup>

Under the Act, there are various restrictions to the granting of mining permits, in areas such as public land held in reserve for recreational purposes, parks, public roads, cemeteries, among others.<sup>304</sup> Moreover, the another aspect of the Act which reads in conjunction with section 20 of the National Parks Act 57 of 1976 for regulating mining activities within protected areas in the

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<sup>298</sup> See Van den Berg (n 226) above at 154.

<sup>299</sup> See JD Wells et al. (n 117) above at 459.

<sup>300</sup> See Kidd (n163) above at 225.

<sup>301</sup> Section 43 of the Act (MPRDA).

<sup>302</sup> See JD Wells et al. (n 117) above at 552.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid at 555. See also section 48(1) of the Act (MPRD).

country, is the National Environmental Management Protected Areas Act (NEMPA).<sup>305</sup> This Act is important in the discussion here because it repealed both the National Parks Act and the Forest Act.<sup>306</sup>

Furthermore, NEMPA in section 48(1), (2) (3) and (4) in its part 4, expresses the restriction of mining activities in particular areas such as nature reserves and, recreational areas. NEMPA was a ground breaking action because it provided for a harmonized approach in the regulation of mining operations within protected areas, unlike the National Parks Act and the Forest Act earlier mentioned which brought about conflicting views concerning mining in protected areas.<sup>307</sup> For a sound implementation of the CCD through the establishment of sustainable land management practices in the country, it is important to assess any activity carried out on the environment, and the impact thereof. Thus, the discussion that follows in the next section below will dwell on the legal and policy framework of Environmental Impact Assessment in South Africa.

### **3.14 Environmental Impact Assessment**

The concept of environmental impact assessment (EIA) is an international recognized concept, which aims at the protection of the environment by ascertaining harm which may occur from any project carried out on the environment. The Stockholm Conference of 1972 on the Human Environment was the first event which gave the EIA international recognition and set the pace for its development and application within various national laws. It was also an issue for concern at the Espoo Convention of 1991 and the Principles of Rio.<sup>308</sup> According to the Rio Convention in its Principle 17, “environmental impact assessment as a national instrument shall be

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<sup>305</sup> Act 57 of 2003: National Environmental Protected Areas Act (hereinafter referred to as NEMPA). It is important to note that the National Parks Act 57 of 1976 has been repealed by the NEMPA thus, the purpose of mentioning it above is that some sections of the Act like section 20 is still applicable in NEMPA.

<sup>306</sup> Act 122 of 1984 (hereinafter referred to as the Forest Act).

<sup>307</sup> With regards to section 20 and 24 (8) of the National Park Act, it provided that carrying out any mining prospecting on any land which is under Scheduled 1 of the Act, is an offence. While on the part of the Forest Act, it was on the opinion that prospecting holders or mining rights can be granted the rights to operate in state forests. See also for further details on this issue, JD Wells et al. (n117) above at 574.

<sup>308</sup> See Philippe Sands “Principles of International Environmental Law” 2<sup>nd</sup> (ed) 2003 at 799-800.

undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”.<sup>309</sup>

However, it should be noted that even before EIA gained internal recognition, which later was officially implemented in various national legislations, some African countries had taken actions which also aimed at the performance of some environmental impact assessment. Thus, Glazewski asserts:

Environmental assessment has been practiced extensively in South Africa, particularly for large projects, since the 1970s. The impetus for this practice originally came about not from legislation but rather from the development of the Integrated Environment Management (IEM) procedure by the Council for the Environment and the Department of Environmental Affairs and Tourism.<sup>310</sup>

The above statement serves as evidence of the fact that many voluntary actions which could be regarded as EIA projects were conducted during this era before the EIA was domesticated in South Africa.<sup>311</sup> The present law which governs the EIA regime in South Africa is the National Environmental Management Act, established in 2006 which was replaced by Act 107 of 1998 (hereinafter referred to as NEMA) chapter 5 in the 2010 Regulations. Also, NEMA repealed the Environmental Conservation Act.<sup>312</sup> While this is not the right place to examine these Acts extensively, the focus in the next sections will be to assess how previous Acts were applied, and implemented, also how this has informed policy in issues relating to land degradation, desertification and drought.

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<sup>309</sup> See Principle 17 of the Rio Convention.

<sup>310</sup> See Glazewski (212) above at 5.

<sup>311</sup> Southern African Institute for Environmental Assessment (SAIEA) Legislation in SADC Region, Handbook on Environmental Assessment- South Africa Country Report (2003) at 212.

<sup>312</sup> Act 73 of 1989 the Environmental Conservation Act (hereinafter referred to as ECA). See also Kidd (n102) above at 236.

### 3.14.1 NEMA and Its EIA Provisions

Sections 21, 22 and 26 of the Environmental Conservation Act, were repealed by the provisions under NEMA. Subsequently, the new provisions of NEMA which repealed that of the ECA could only come into effect after the promulgation of section 24 of NEMA after meeting the requirements as prescribed. Thus these sections, 21, 22 and 26 have “become redundant”.<sup>313</sup> Despite the fact that NEMA officially began in 1999, it took a while for those regulations that give effect to EIA to come into force.<sup>314</sup>

Chapter 5 of NEMA contains what is referred to as the “Integrated Environmental Management” (IEM), and stresses the implementation of section 24. Important also to note is the fact that the amendments of NEMA brought changes to some major aspects of its approach with regards to the issue of authorization. Thus, section 24 of NEMA which was initially coined as “implementation, was later on changed to what is now known as environmental authorizations”.<sup>315</sup> Kidd<sup>316</sup> contends that “the main result of the amendment is to narrow the scope of activities that requires authorization”. This point is further supported by Kidd and Retief who argue that:

It is unlikely that the thinking behind the amendment to NEMA was to remove the provisions relating to cultural and socio-economic considerations because they were redundant. It is apparent that the objective was to reduce the scope of EIA, which is, in our opinion, a retrogressive step. The removal of express reference to socio-economic conditions may well lead to reinforcement of the view that environmental law is concerned solely with ‘green’ issues and not with environmental justice.<sup>317</sup>

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<sup>313</sup> Section 50 of NEMA Act 107 of 1998.

<sup>314</sup> The Regulations concerning EIA in NEMA only got into force in 2006 which is contained in GN R615 in GG 28938 of June 23, 2006 and repeals the Environment Conservation Act 73 of 1989 in GN R1183, R1184, GN R616 and GN R1183 respectively.

<sup>315</sup> The National Environmental Management Amendment Act 8 of 2004.

<sup>316</sup> See Kidd (n 163) above at 239.

<sup>317</sup> See M. Kidd and F Retief “Environmental Assessment” in HA Strydom and Kings (ed) in Fuggle and Rabies Environmental Management in South Africa (2009) at 1027-1028.

Furthermore, the issue of public participation in EIAs has been given attention so to ensure an efficient and integrated approach to environmental governance in the amendments of NEMA which excludes the period of 15 December to 2<sup>nd</sup> January from being counted for consultation. This period which might distract the attention of civil society in providing a sound opinion in EIA matters.<sup>318</sup> Moreover, the amendments also require for the authorities concerned to publish their decision in the newspaper or medium used during the period of consultation which involved the contribution of the civil society.<sup>319</sup>

The objectives of integrated environmental management are contained in chapter 5 of NEMA, which aims at the facilitation of pertinent applications for environmental management.<sup>320</sup> However, surprisingly enough, there is no clear definition of IEM in the provisions of NEMA. Some commentators have suggested that reference to IEM in the Act does not have the same implications as EIA.<sup>321</sup> Thus, one's understanding of this section 2(4) (b) of the Act, which makes reference to the term, is not clear. Moreover, the choice of the use of the word 'integration', readily suggests a kind of centralized approach in environmental protection which includes, inter alia, all components of the environment, especially land in particular. The expression of the Act relating to integration, reads as follows:

Environmental management must be integrated, acknowledging that elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.<sup>322</sup> Moreover, according to Retief and Kotze, "the choice of expression IEM, has falsely used IEM as a pre-requisite for the EIA ruling."<sup>323</sup>

However, an effective EIA regime will ensure for sound land conservation in that, the results will inform policy on the harm which could affect the environment and land in

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<sup>318</sup> See EIA in South Africa (n 252) above.

<sup>319</sup> Ibid.

<sup>320</sup> See section 23(1) of NEMA.

<sup>321</sup> See F Retief and L Kotze "The lion, the ape and the donkey; cursory observations on the misinterpretation and misrepresentation of environmental impact assessment (EIA) in the Chronicles of Fuel Retailers" (2008) 15 SAJELP 139, at 143.

<sup>322</sup> See section 2 (4) (b) of NEMA.

<sup>323</sup> Ibid.

particular if some developmental projects are to be established. Thus, it serves as a preventive mechanism against land degradation.

### **3. 15 CONCLUSION**

Within this chapter, various South African action programmes have been discussed which form its domestic response to the implementation of the UNCCD. Among the legal and policy programmes discussed, are early government actions on sustainable land management before South Africa became a party to the Convention. These include, the Forest and Veld Conservation Act and the Conservation of Agricultural Resources Act.

This chapter also presented a description and attempted the evaluation of South Africa's domestic action programmes to give effect to the implementation of the UNCCD. These programmes include the National Environmental Management Act (NEMA), the National Forest Act, and the National Water Act which discussed issues under the Act such as the Catchment Management Agencies, the National Water Resources Strategy (NWRS) and the Working for Water Programme (WFWP). This chapter also described the Mineral and Petroleum Resources Development Act (MPRDA) and finally an evaluation was attempted of the South Africa's Environmental Impact Assessment (EIA) regime.

Furthermore, the various institutions housing these policies, legislation and programmes were also described, including the Department of Environmental Affairs and Tourism (DEAT) and the Department of Water Affairs and Forestry (DWAF). Various South African government policy documents with direct relation to the implementation of the CCD were also discussed in this chapter. These policies include, the White Paper on South Africa Land Policy, the National Water Policy for South Africa, the White Paper on Forestry and the White Paper on Sustainable Development.

Finally, this chapter presented the new NWRS2<sup>324</sup> which aims to achieve equitable and sustainable access to water resources for every South African in order to reduce the current water stress in the country, the eradication of rural poverty and enhance environmental protection as a national action programme, to implement the CCD. Despite the existence of all these programmes and the different legal and institutional mechanisms which have been put in place to implement the CCD, it is not working because of government involvement in almost all the projects. This makes implementation weak. However, it is also fair to say that, there are commendable programmes being put in place, to raise public awareness, and capacity building of the local communities living in dry land areas among others. These show South Africa's firm commitments to implement the Convention in the long run.

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<sup>324</sup> See the new NWRS2 (n165) above.



## CHAPTER FOUR

### CAMEROON NATIONAL ACTION PROGRAMMES

#### 4.1 Introduction

This chapter will include evaluating the various programmes, legislation, policy and regulations through the institutions established by the government of Cameroon as its NAPs to implement the UNCCD. Also, the chapter will present some of the problems identified in the structures set up as the country's areas of priority concern to implement the Convention and also actions by civil society organization's (CSO) aimed at implementing the Convention.

Cameroon which appears on the map in the shape of a triangle covers a surface area of 475000Km square. The country is blessed with numerous rivers taking rise from the Adamawa plateau in the Sahelian northern region of the country. These water bodies serve as supply to the Central African sub region, "four main catchment areas of Central Africa namely: Congo, Niger, Lake Chad and the Atlantic".<sup>325</sup> Cameroon has three major climatic zones with about "2000 mm of rain on average per annum, with an average temperature estimated at 25 degrees centigrade" in the equatorial rainforest zones. The Sudanian climatic zone, witnesses a five to six months period of dry season with minimum rainfall of about 1000 mm, and temperature falling to about 22 degree Celsius. The northern regions (Sudano Sahelian zone) with a long dry season of over seven months and low rainfall are among the most affected by drought.

Like other African countries, Cameroon is also suffering from the effects of desertification, land degradation, water shortage, especially in the Sahelian regions of the north, and an increase in the growth of its population estimated at 2.082% per annum.<sup>326</sup> The country has a population, as of the<sup>327</sup> 2012 statistics, of about 21.994 million people. Moreover, the increasing debt servicing

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<sup>325</sup> The National Capacity Self-Assessment in Global Environment Management (ANCR-NCSA Process) of October 2007 available at <http://www.thegef.org/sef/sites/thegef.org/files/documents/document/ncsa-cameroon> (accessed on April 8, 2013).

<sup>326</sup> See World Fact book available at <http://www.cia.gov/library/publication/the-world-factbook> (accessed on April 22, 2013).

<sup>327</sup> See Real Clear World available at <http://economic-outlook.realclearworld.com> (accessed on April 29, 2013).

and poverty, exacerbated by high un-employment rate, has deepened the problems faced by the environment. Thus, from a cursory look, the state of the environment in Cameroon is not up to what could be expected.

## 4.2 State of the Environment in Cameroon

### 4.2.1 Biological Diversity

About 90% of the entire ecosystems of the African Continent are found in Cameroon which is why many now refer to the country as Africa in (miniature). It has a diversity of flora and fauna which places her in the position of the fifth most biologically diverse country in Africa,<sup>328</sup> she is second only to the Democratic Republic of Congo for variety of primates and third in Africa in terms of richness of flora.<sup>329</sup> Moreover, it should be noted that this rich biodiversity has been influenced among other things, by the country's agro-ecological diversity zones.<sup>330</sup> According to the IUCN, Cameroon has about 9 000 varieties of higher plant species, 404 mammals, 850 birds, 210 reptiles, 50 amphibians and 540 fishes.

However, it has been recognized that most of Cameroon's rich biological diversity is threatened or near extinction. This is as a result of a number of factors including the pressure on natural resources by the local population for their livelihood, coupled with the civil unrest which broke out in the Central African sub-region in 1997. These conflicts, in countries like Rwanda, the Democratic Republic of Congo, the Central African Republic and Sudan among other places, saw the influx of a number of displaced persons to Cameroon as refugees thus exacerbating the pressure on natural resources leading to the loss of its biodiversity.<sup>331</sup>

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<sup>328</sup> Cameroon is ranked the fifth most biologically diverse country in Africa after the DR of Congo, South Africa, Madagascar and Tanzania. Available at <http://www.biocam.net> (accessed on April 29, 2013).

<sup>329</sup> Ibid.

<sup>330</sup> These agro-ecological zones include; the Western high plateau zones, the Guinean high savannah areas, the sudano-sahelian zones, the moist wet forest zone with bimodal pluviometry, and the moist forest zone with monomodal pluviometry available at (n 26) above at 14.

<sup>331</sup> Africa Environmental Outlook "Land Quality and Productivity in Central Africa" available at <http://www.unep.org/dewa/Africa/publication> (accessed on April 17, 2013).

#### 4.2.2 Land and Deforestation

Cameroon used to be the ‘bread basket’ of West and Central Africa but land degradation, drought and desertification have now made the country to rely heavily on importation of food stuffs like cereals and on food aids. Thus, land degradation poses enormous challenges to the economy and directly affects its citizens. Land degradation especially in the Sahelian northern regions of the country and the grand south of the western plateau, has been facilitated by poor farming techniques such as the practice of bushfires before crops cultivation, leading to a reduction in agricultural productivity.<sup>332</sup> The fall in agricultural productivity due to land degradation, led to the importation of foodstuffs like rice, which costs about 120 billion CFA Francs between the years 2000 to 2010.<sup>333</sup> According to Cameroon’s Director General of customs, Minette Libom Li Likeng<sup>334</sup>, land degradation has caused;

The sharp drop in agricultural production and consequently trade in 2011 in the northern regions of Cameroon and its neighboring countries has been attributed partly to a reduction in soil productivity due to prolonged dry season caused by aggravated global warming.

With regards to deforestation according to the Minister for Forestry and Wildlife Philip Ngole Ngwese, about 80% percent of the country’s natural forest has been lost to fuel wood for heating by the local population and the illegal exploitation of timber and other forest products. The government of Cameroon is taking active reforestation measures which cost about 12.1 million dollars per annum, (to restore back the lost forest).<sup>335</sup> The natural dense mangrove forest of the Littoral region of the country has also been over-exploited. According to statistics from the Cameroon mangrove connection, it has only about four hundred hectares left from the six

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<sup>332</sup> E Ntungwe Ngalame “drought-hit Cameroon counts the cost of reduced trade” available at <http://www.trust.org/alertnet/news/detail.dot?id=965> (accessed on April 10, 2013).

<sup>333</sup> CFA Francs (Central African Franc) is the currency that is used in Cameroon and as indicated by the authorities, about 120 billion CFA Francs depending on the exchange prevailing rates, could amount to US dollar 240 million is spent for the importation of cereals like rice and millet.

<sup>334</sup> Ibid, in estimation on agricultural productivity in Cameroon by Minette Libom Li Likeng.

<sup>335</sup> See (n276) above at page 2.

hundred thousand hectares ten years ago.<sup>336</sup> The loss of the mangrove forest has been attributed to the unregulated felling of trees by local fishermen to smoke their catch, for preservation.<sup>337</sup>

### 4.2.3 The Coastal Zone and Marine Resources

Cameroon has formidable coastal zones and marine resources, which the majority of the people dwelling in these areas rely heavily on for their livelihood, which are in serious threat from practices such as over fishing. The coastline extends to the Island of the Bakassi Peninsular, (to the Atlantic Ocean of the south west region stretching to the dense Equatorial mangrove rainforest of the Littoral region of the country).<sup>338</sup> The Cameroon Coastal zone comprises two distinct areas namely: the low lying and the rocky coasts covering a surface area of about 150 meters square and at an altitude of about 90 degrees.<sup>339</sup>

As a result of the advancement in technologies which has culminated in the influx of experts of other nationalities like the Chinese for example, who are seriously engaged in fishing in the country, the Coastal zone is witnessing over-exploitation of its marine living resources. Another major problem affecting Cameroons coast, is the issue of urbanization. There is rapid infrastructural growth along the Coast in the form of heavy industries. Pollution from household and industrial wastes coupled with that from oil spills, are other challenges faced at the coast of Cameroon, which constitutes a threat to marine living resources.

The issues mentioned, represent some environmental realities of the country. Although there are additional issues of environmental concern which also exacerbate drought, land degradation and desertification, the discussion that follow, will focus on what Cameroon is required by the UNCCD to do in its NAP, and also areas where she proposes to give priority in establishing its

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<sup>336</sup> Boris S and Pierre Evembe “Mangrove destruction in the Cape of Cameroon Littoral region and its environs which makes difficult water availability to the population” translation from the French version published on April 9, 2013 available at [http://www.crtv.cm/cont/nouvelles\\_sola\\_fr.php](http://www.crtv.cm/cont/nouvelles_sola_fr.php) (accessed on April 12, 2013).

<sup>337</sup> See (n 277) above.

<sup>338</sup> Chebo K. Asangwe “The Douala Coastal Lagoon Complex, Cameroon: Environmental Issues” Journal of Coastal Environment available at [http://www.fig.net/pub/figpub/pub36chapter\\_9.pdf](http://www.fig.net/pub/figpub/pub36chapter_9.pdf) (accessed on April 26, 2013).

<sup>339</sup> Etienne T. Pamo “Country Pasture/ Forage Resource Profiles” available at <http://www.fao.org/ag/AGP/AGPC/DOC/C> (accessed on April 29, 2013).

NAP. The action programmes will be analysed in relation with the legal and different institutions as Cameroon's NAP, to domesticate the UNCCD aimed at implementing the Convention. Moreover, before attempting an evaluation of the NAP of Cameroon, it would be important to present some environmental Conventions alongside the UNCCD, which Cameroon is a party to.

As mentioned previously, the numerous phytogeographical zones present in Cameroon and her richness in biodiversity has earned the country the nick name of "Africa in miniature". This is because almost all the continent's ecosystems could be found in the country. Because of the threat of extinction of these species and the reduction of agricultural productivity, partly caused by land degradation, drought and desertification,<sup>340</sup> has prompted the country to join different environmental Convention's to help protect its biodiversity. Some of these environmental Convention's without being limited to are:

- The Convention to Combat Desertification and or Drought by ratification on May 29, 1997;
- The United Nations Framework Convention on Climate Change ratified on October 19, 1994;
- The International Agreement on Tropical Timber signed on April 15 1985
- The United Nation Convention on the Laws of the Sea (UNCLOS).
- The Abidjan Convention on co-operation and the protection and development of coastal zones of West and Central Africa and its protocol ratified on March 1<sup>st</sup> 1983;
- The Niger Basin Authority (ABN);
- The Lake Chad Basin Commission (CBLT);
- Conservation and the rational use of Central Africa Forest Ecosystems (ECOFAC).<sup>341</sup>
- Cameroon has also put into place various national action plans to implement the CCD which will be evaluated in the following paragraphs below.

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<sup>340</sup> The Cameroon Ministry for the Environment and Nature Protection (hereinafter MINEF, 1999).

<sup>341</sup> See (n277) issue on May 2007, ANCR- NCSA Project: Rainbow Environment Consult Sarl "Inter Thematic Evaluation of Capacity Strengthening in the Implementation of the three Rio Conventions in Cameroon: Biodiversity, Climate Change and desertification Control".

### 4.3 Cameroon's obligations to the UNCCD and priority action programmes in its NAP

As a party to the UNCCD, Cameroon like other African parties to the Convention, is required to create a NAP which include aspects such as:

- To invest in action programmes to combat desertification and land degradation which ameliorates the living conditions of the poor and increase agricultural production to meet the demands of the population;
- To reinforce current legislation and enact new ones which give effect to actions that fight against desertification, land degradation and the management of natural resources in the long term;
- To ameliorate the legal and institutional structures and the creation of mechanisms to generate funding to assist in combating desertification;
- To reinforce synergies with other giant sectorial programmes concerned with sustainable land management practices and the three Rio Conventions (CCD, CBD, and UNFCCC).<sup>342</sup>

Environmental governance in Cameroon seeks to give effect to Principle 4 of the Rio Declaration.<sup>343</sup> This principle provides that environmental issues should be taken into consideration in any developmental process. While the Rio Declaration established the effects of desertification on the international arena by laying the framework leading to the UNCCD, the government of Cameroon is exhibiting its environmental policy in the form of setting up programmes, enacting new legislation and strengthening existing ones to give effect to her commitments as party to the Convention. The various strategies employed by the government give effect to the requirements of Agenda 21 of the Rio Declaration<sup>344</sup> which provides for various strategies that could be adopted by states for a sound and sustainable use of natural resources of the environment. Thus, in this regard, Cameroon proposed to give attention in establishing its NAP, focusing on programmes such as: the national forests protection through the fight against poaching and illegal timber exploitation and reforestation campaign, local development projects like the creation of farm to market roads in rural dry land areas to reduce

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<sup>342</sup> Ibid at p. 49.

<sup>343</sup> Rio Declaration on Environment and Development June 1992, 3 ILLM874.

<sup>344</sup> Ibid.

severe poverty, by making access for local farmers to easily sell their farm produce in urban centres, the creation of an effective land tenure regime which promotes sustainable land management projects and the opening of land and agricultural research institutions. These are the priority areas where the Cameroon NAP focuses its programmes for the implementation of the UNCCD.<sup>345</sup> The discussion below will focus on evaluating the NAP of Cameroon.

#### **4.4 The National Action Programmes of Cameroon<sup>346</sup>**

The government of Cameroon through its partners and the civil society has identified programmes in its NAP to give effect to the implementation of the UNCCD. These action programmes include without being limited to, the National Operation Green Cameroon, the Strategic Development of the Rural Sector, the National Forestry Action Plan, sustainable land management programmes through an efficient land tenure and reforms regime, the creation of a National Special Fund for Environmental Conversation among others.<sup>347</sup> These programmes according to the Cameroon NAP are being managed and guided through different institution and legal framework established by a cross section of different ministries and civil society organizations. Thus, analyses of how these programmes are being implemented will be evaluated through the various institutions responsible for their management and sound implementation given effect to the objectives of the Convention. However, before looking at the aforementioned programmes through the different government institutions responsible for implementation, it is necessary to evaluate the activities of some accredited civil society organizations (CSOs) to the Convention, working together with the government of Cameroon to meet up with the objectives of the NAP. The CSOs that will be discussed below include without being limited to, the Initiative for Local Development Services, which is the key accredited organization for the implementation of the Convention through rural development projects in Cameroon.

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<sup>345</sup> The UNCCD Performance Review and Assessment of Implementation System of Cameroon available at <http://www.unccd.int/ActionProgrammes?Cameroon-fre2006pdf> (accessed on December 14, 2013).

<sup>346</sup> The National Action Programmes of Cameroon, better known in its French version as Plan D'Action National De Lutte Contre La Desertification (PAN/LCD) available at <http://www.unccd.int/ActionProgrammes/Cameroon-fre2006.pdf> (accessed on November 26, 2013).

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#### 4.4.1 The Initiative for Local Development<sup>348</sup>

This civil society organization is engaged in connecting the rural sector of Cameroon to government actions to boost agricultural productivity through sustainable land management practices. Among the many projects being carried out by this organization, the Banana-plantain production is the most significant.<sup>349</sup> This is because the banana-plantain is one of the commonly consumed foodstuffs in all regions of the country. The programme is present in all the localities of the country and assists local farmers and farming groups with financial grants and short loans which are payable after two years of harvesting and sale of products.<sup>350</sup> Capacity training are also being organized with agricultural experts educating the local farmers on the best sustainable land management practices and different methods to increase their production. This has seen the increase of banana-plantain produced nationwide to about forty five per cent of the estimated twenty million tons produced worldwide.<sup>351</sup>

Furthermore, through this programme, the government of Cameroon provides financial support to the programme which enables for the subsidization of the costs of purchasing disease free banana-plantain seeds for less than one US dollar.<sup>352</sup> Thus, the Initiative for Local Development with financial support from the government, has made access to farm and market roads easy for local farmers to successfully take their produce to urban Centre's where they could sell and make profits as an ongoing policy to reduce rural poverty in the country. Because of the importance of policies which could either reduce the resilience or exacerbate the effects of drought, land degradation and desertification, various legal and institutional mechanisms, which assist in the implementation of the NAP objectives, will be evaluated below. These institutions include without being limited to: the Ministry of the Environment and the Protection of Nature (MINEP), the Ministry of Wildlife and Forestry, (MINFOF) the Ministry of Agriculture and Rural

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<sup>348</sup> The Initiative for Local Development, known in the French version as Service d'Appui au Initiatives Locales de Developpement available at <http://www.said.org> (accessed on November 28, 2013).

<sup>349</sup> The Banana plantain production programme available at <http://www.said.org/said/banan.pdf> (accessed on November 28, 2013).

<sup>350</sup> Ibid.

<sup>351</sup> Ibid.

<sup>352</sup> Ibid in the Upper Noun Valley Development Authority (hereinafter referred to as UNVDA) in issue No. 260, January 2013 indicating the cost of purchasing about three banana plantain seeds for less than one US dollar.



Development (MINADER), the Ministry of Scientific Research and Innovation (MINRES), the Ministry of Mines and Technological Development (MINMIDT), and the Ministry of Town Planning and Land Tenure. Before an evaluation of these institutions can be attempted, in order to assess their capacities in the implementation of the UNCCD, it is important to describe the various legal frameworks which have been established by the government of Cameroon to implement the UNCCD. These laws are discussed below.

#### **4.4.2 The 1994 Forestry Law in Decree (No. 94/001 of January 20, 1994)<sup>353</sup>**

This law fixes the modalities and various regulations and the applicability of the Wildlife, Fisheries and Forestry sectors of Cameroon. Article 1 of the law, provides for the objectives which include, without being limited to, the sustainable management of the country's forest against the illegal exploitation. It also lays down various modalities for putting in place forest management plans (FMPs) that must take into consideration the social and economic realities of the forest sector.

Articles 20 and 21 of the law (1994 law), separates the forest into two portions which include, the permanent and non-permanent forest spheres. The permanent forest area is defined as all lands which have been allocated permanently to and/or for the purpose of Forest, Wildlife and their habitats. On the other hand, non-permanent forest areas include, forest which can be allocated for other developmental or recreational purposes as the need arises.<sup>354</sup> With regards to Article 5 of the CCD, which requires parties to involve the participation of the local population as important partners to combat desertification and mitigate the impacts of drought, Articles 7 and 8 of the Cameroon 1994 Forestry law gives effects to the Convention requirement in this regard. The law also provides for measures of forest and forest products ownership and procedures for distributing benefits coming from the exploitation of the forest.<sup>355</sup> Articles 19 of the 1994 law lays emphasis on various measures, which can generate incentives to encourage

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<sup>353</sup> Decree No. 94/001 of January 20, 1994 (hereinafter referred to as the 1994 Forestry law). Republic of Cameroon.

<sup>354</sup> P Omar Cerutti et al. "Sustainable Forest Management in Cameroon, Needs more than Approved Forest Management Plans" *Journal of Ecology and Society* Vol, 13(2) available at <http://www.ecologyandsociety.org/vol13/iss2/art36> (accessed on May 5, 2013).

<sup>355</sup> See Ministerial Order No. 000122/MINEF/MINAT of April 29, 1998 and also Article 68 of the 1994 Forestry law.

local community partners to promote reforestation campaigns within their localities. It should however be noted that, as of the 31<sup>st</sup> of December 2012, there was a presidential decree in Cameroon which has modified certain provisions of the 1994 Forest Code.<sup>356</sup>

#### **4.4.3 Preventive and control measures on Desertification Decree No. 95/678/PM of December 18, 1995**

This law provides for a legal framework to generate incentives to facilitate reforestation in forest areas in the southern parts of the country facing serious deforestation.<sup>357</sup>

#### **4.4.4 Land and soil protection and prevention in decree No. 96/12 of August 5, 1996**

This is a framework law which aims, among other issues, at instituting a prevention and control measure for land degradation and soil erosion leading to desertification.<sup>358</sup> Worthy also to note is that, this law creates a legal obligation and rights to all citizens of Cameroon in the protection of the environment with particular emphasis on land and soil protection.<sup>359</sup>

#### **4.4.5 Cameroon water regime in Law No. 98/005 of April 14 1998**

The law establishes various mechanisms on water use, protection and the exploitation of lands.<sup>360</sup> Also, the law regulates activities carried within catchment areas and provides guidance on the sustainable use of water for irrigational farming.

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<sup>356</sup> Presidential decree of December 31<sup>st</sup> 2012, modifying certain provisions of the Forest Code available at <http://www.forestpeoples.org/sites/fpp/files/news2012/12/version> (accessed on May 5, 2013).

<sup>357</sup> Presidential decree No. 95/678/PM of December 1995 setting up a framework on generating incentives to support land use and reforestation in the southern forest regions of the country.

<sup>358</sup> Decree No. 96/12 of August 5, 1996 providing for control and preventive procedure for desertification contained in Article 36 and 38 of the law.

<sup>359</sup> Ibid, in Chapter III, Article 9 (E) of the law.

<sup>360</sup> Article 2 and 26 of Law No. 98/005 of April 14 1998 (hereinafter referred to as the Cameroon water regime law).

#### **4.4.6 Law on farmer-grazer disputes in Decree No.78/263/PM of July 3, 1978<sup>361</sup>**

This law puts in place procedures for the settlement of disputes between farmer-grazer conflicts or within pastoralist themselves. This law has not been repealed after the ratification of the CCD by Cameroon and it remains a worthwhile instrument used to resolve disputes between farmers and pastoralist alike, of which these disputes have facilitated land degradation in those conflict areas.

#### **4.4.7 The creation of a special fund for a sustainable development in the water sector in Decree No.2001/161/PM of May 8 2001**

The law provides for the creation of an account to cater for water with particular attention to water sanitation for basic consumption and other uses.<sup>362</sup> Thus, this comes as a response to the requirement of the UNCCD for parties to make available financial resources to facilitate the Conventions implementation.

- The 2004 Mining Code. The Code, aims at regulating mining activities in a sustainable manner which takes into consideration the development of the country through its natural deposits.
- Decree No.2009/410 of December 2009 creating the Cameroon National Observatory on Climate Change (ONACC);
- Decision No.09/MINEP of 15 January 2009 which creates a steering committee to serve as the focal point of the country's REED plus pilot project.<sup>363</sup>

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<sup>361</sup> Decree No.78/263/PM of July 3, 1978 on conditions and procedures on dispute settlements on farmer grazer conflicts.

<sup>362</sup> Article 1, 2, 3 of Decree No. 2001/161/PM of May 8, 2001. See also for more on this, ANCR-NCSA (n277) above at 30.

<sup>363</sup> REED Countries: "A database of REDD activities on the ground" available at [http://www.theredddesk.org/countries/cameroon/legal\\_framework](http://www.theredddesk.org/countries/cameroon/legal_framework) (accessed on May 6, 2013).

#### 4.4.8 Penalties and Sanctions

The 1994 forestry law on wildlife protection in Cameroon, punishes any person illegally possessing parts of wildlife species either dead or alive with a prison term of three years or more, and with a fine ranging from 50 thousand franc CFA equivalent to 100 US dollar to 3 million CFA equivalent to 6000 US dollar.<sup>364</sup> Against the background of the legal framework outlined above, various institutions housing these laws, policy and programmes will be discussed.

#### 4.5 The Ministry of the Environment and Protection of Nature (MINEP)<sup>365</sup>

The Ministry of the environment and protection of nature (MINEP) is the principal authority in charge with the implementation of the CCD through the creation of national coordination bodies<sup>366</sup> to set-up various national and regional programs to give effects to the CCD. The MINEP, as the principal institution created by the government of Cameroon to implement the Convention to Combat Desertification and or mitigate the impact of Drought particularly in those countries seriously affected in Africa, has jointly with the Ministry of Wildlife and Forestry MINFOF organized capacity training workshops as part of empowering local forest community inhabitants, like the local “Pigmy” group of the Baka tribe living east of the country’s forest region who depend solely on the forest for their livelihoods. An example of such capacity building workshops is that which was organized in 2010 to educate the local forest masses on the importance of the REDD-Plus<sup>367</sup> and the sustainable use of forest, forest products and land management.<sup>368</sup>

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<sup>364</sup> A Justin Eyebe et al, “Integrated Biodiversity Conservation into National Development Policy: A case study of Cameroon” available at <http://povertyandconservation.info/sites/default/files/Biodiversity%20mainstreaming%20Cameroon%2> (accessed on May 6, 2013).

<sup>365</sup> The Ministry of the Environment and Protection of Nature (hereinafter referred to as MINEP)

<sup>366</sup> The National Coordination Body (ONC) translation from the French version.

<sup>367</sup> REDD-plus refers to global activities leading to reducing emissions from deforestation and forest degradation. It developed during the 13<sup>th</sup> Conference of the Parties of the UNFCCC held in Bali available at <http://forest-carbon.org/faq/what> is redd-plus (accessed on April 16, 2013).

<sup>368</sup> H. Unusa “Global experts workshop on REDD-plus Biodiversity Benefits, Nairobi, Kenya, 20-23 September 2010” available at <http://cbd.int/doc/meetings/for/ewredd-01/other/ewredd-01cameroon-en.pdf> (accessed on May 2, 2013).

Under the Ministry, various national and regional institutions have been created for drought and desertification control. These institutions include among others, the creation of a national focal point in charge of overseeing the affairs of the CCD.<sup>369</sup> One of the responsibilities of the focal point, is the establishment of an environmental fund on sustainable development. This fund lay down a framework for all financial issues for addressing environmental issues in a timely fashion.<sup>370</sup> There is also a committee with representation from every ministry to evaluate and assess action taken to combat desertification.<sup>371</sup> In addition to consultations with other experts committed to the fight against desertification and the mitigation of the impacts of drought, the interministerial committee (CIS/LCD), came up with a “National Desertification Control Action Plan” (PAN/LCD). According to the ministry of the environment and the protection of nature, the national plan of action has as its main objectives to:

- Reverse the trends of desertification and land degradation, by means of actions which improve the living environment and the basis of production of populations,
- Reinforce consultation/dialogue and complementarity around desertification control actions and the sustainable management of natural resources,
- Strengthen the synergy within major sector programs and between the three United Nations Conventions (CCD, CBD, UNFCCC), while improving the legal-institutional structure and mechanisms for financing desertification control activities.<sup>372</sup>

Furthermore, the ministerial report on the country’s self-assessment on the progress made in the fight against desertification held that, five priority areas were indicated for the success of the national action plan for desertification control. These priority areas include:

1. Spatial planning and participatory management,
2. Sustainable management of natural resources (water, soils or lands, plant cover, wildlife)
3. Restoration of degraded lands and improvement of soil fertility.
4. Building or strengthening the capacities of actors in desertification control actions.

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<sup>369</sup> See (n269) above at 29.

<sup>370</sup> Ibid.

<sup>371</sup> Interministerial Committee for the follow-up of desertification control (hereinafter referred to as CIS/LCD). Translation from the French version.

<sup>372</sup> See ANCR-NCSA Process (n269) above at 33.

## 5. Concerted management of shared resources at the sub-regional level.<sup>373</sup>

The various institutional environmental mechanisms are aimed at communicating the commitment of the government of Cameroon to implement the CCD. This commitment was further strengthened when the former principal governing body for environmental concerns, the MINEF<sup>374</sup> was divided to create MINFOF and MINEP respectively in 2004. The split was to provide direct focus on the implementation of the CCD.<sup>375</sup>

### 4.6 The Ministry of Wildlife and Forestry (MINFOF)

The Ministry of Wildlife and Forestry was created as a result of the split from the previous governing body for environmental protection in Cameroon, MINEF, to establish a body that will deal specifically with forest and wildlife issues. Given the importance of the forest acting as a carbon sink regulating atmospheric conditions, the forest is also a vital sector to implement the CCD because it prevents soil erosion which leads to degradation. Estimates of the past decade show that the Cameroon forest covered a surface area of about 23.8 million hectares or approximately 51.3% of the total land surface,<sup>376</sup> but, as the estimate further shows, there is an annual loss of forest of about 222,000 hectares as a result of deforestation. Cameroon forest accounts for about 3,211 metric volumes of important wood for exportation.<sup>377</sup>

It should be noted that the wildlife and forest plays a crucial role in the livelihood of the local population of forest dwellers in Cameroon, providing for their hunting and gathering activities, and also for their medicinal purposes. The forest also, acts as a source of state revenue through timber exploitation and the exportation of non-timber products. However, because of the illegal exploitation of these natural resources, the MINFOF has established national action programmes

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<sup>373</sup> Ibid.

<sup>374</sup> The ministry of the environment and forestry (hereinafter referred to as MINEF) replaced creating two separate ministries.

<sup>375</sup> See NCSA Project (n269) above at 12.

<sup>376</sup> Wilkie and Carpenter “Legal Compliance in the forest sector. Case –Study: Cameroon” 1998 World Bank/WWF Alliance Report, 2002 available at <http://www.fao.org/forest/19580-0t> (accessed on May 9, 2013).

<sup>377</sup> Ibid.

to address these issues. This reflects the country “putting in place” domestic actions to implement the UNCCD.

Challenges within the forest and wildlife sector in Cameroon include: illegal timber log exploitation, wood fuel for heating and the ‘Bush Meat’ illegal trade.<sup>378</sup> According to report from the World Bank and the World Wildlife Fund Alliance, about 78,000 Metric tons of Bush Meat is extracted annually for local consumption.<sup>379</sup> Also, a 2003 report from the Food and Agricultural Organization (FAO) shows that about 9,958 M or 77% of the country’s wood in 2000 was lost to fuel wood posing problems to forest management.<sup>380</sup> In addition, the recent poaching of about 300 elephants in 2012 at the Bouba Ndjaji park, in the Far North of Cameroon, highlights some of the challenges facing wildlife and biodiversity in general, in the Cameroon.<sup>381</sup> Moreover, the effects of the aforementioned to exacerbating desertification is that, the Wildlife and the Forestry sectors contributes as foreign earning to the economy through tourism . Therefore, jobs are created through these sectors thus alleviating poverty which is one of the objectives of the UNCCD.

#### **4.6.1 Actions Lay Down By MINFOF**

National action plans to address problems within the forest sector in Cameroon includes, the creation of the forest environment sector programme (FESP). This organ aims at among other things, engaging the civil society and experts in the forest sector in the fight against the illegal exploitation of fauna and flora. The FESP, sometimes known by its French acronym PSFE, serves as a national strategic plan with particular focus on the forest sector of the south west

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<sup>378</sup> The (“Bush Meat”) here refers to the consumption of game meat by the local population through the illegal trade which is becoming like a cultural practice posing challenges to conservation. Game meat is considered as source of protein as well as a source of livelihood through trading.

<sup>379</sup> Wilkie and Carpenter, (n309) above.

<sup>380</sup> Ibid, FAO Report at 4.

<sup>381</sup> 300 elephants killed in Cameroon in 2012.

region of the country.<sup>382</sup> The FESP is an instrument which brings together forest dwellers in the region, not only as part of a sensitization process, but also, serves as a platform for crucial issues such as the payment of forest royalties to villages which host the forest in the region.<sup>383</sup> According to MINFOF, the experience of the south west region will inform policy on how to establish forest regulations in other forest areas of the country.<sup>384</sup>

Another action plan jointly set up by the ministries of MINEP, MINFOF and supported by the GTZ<sup>385</sup> was the poverty reduction strategy plan of action (PRSP). This action plan came up in the year 2000 during the structural adjustment programme (SAP), which, upon instructions given by the World Bank and the International Monetary Fund (IMF), saw the Cameroon forestry sector as a significant contributor to the country's Gross Domestic Production which could well reduce rural poverty, in line with the MDGs.

Furthermore, this program, the PRSP, takes into consideration the need for poverty alleviation by boosting the environment and natural resources as priority areas.<sup>386</sup> The poverty reduction strategic plan works in collaboration with the Rural Sector Development Strategy Document.<sup>387</sup> This joint programme coupled with support from other partners such as the World Bank, for example, has pressured the government of Cameroon to include the SAP in the 1994 Forestry law, community ownership of forest.<sup>388</sup> This was a welcome initiative to many forest communities, which considered their involvement in the management of the forest and forest products, as opposed to the past where the forest was entirely owned and controlled by the government.<sup>389</sup>

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<sup>382</sup> Forest Environment sector Program: strategic plan for the South West Region for 2010 to 2013 (here in after referred to as FESP) the translated French version available at [http://data.cameroon.foret.com/system/files/11\\_03\\_416.pdf](http://data.cameroon.foret.com/system/files/11_03_416.pdf) (accessed on May 2, 2013).

<sup>383</sup> Ibid.

<sup>384</sup> Ibid.

<sup>385</sup> The German Technical Cooperation (here in after referred to as GTZ).

<sup>386</sup> See the ANCR-NCSA Report (n269) above at 14.

<sup>387</sup> Translation of the French version (herein after referred to as the Rural Sector Development Strategy Document) DSDSR.

<sup>388</sup> See Wilkie and Carpenter (n309) above at 10.

<sup>389</sup> Ibid.



Tree planting exercise is another action taken by the Ministry of Wildlife and Forestry in collaboration with civil society, non-governmental organizations and the Cameroon National Assembly. The tree planting exercise is aimed at reforestation and has been given various appellations to send the message across the country. These programmes includes “One woman, One Tree” launched by the speaker of the Cameroon House of Assembly of parliamentarians, Honorable Calvaye Y Ndjibril and the head of the PAN-African Parliamentary Network on Climate Change (REPPACC), Awudu Mbaye.<sup>390</sup> In addition, Operation Green Cameroon and the reforestation campaign of mangrove around the Campo and the forest reserve areas of the cities of Douala and Edea along the coast, have been coordinated by authorities of MINFOF and the Cameroon Mangrove Network (CMN). Through the actions of these groups, it is estimated that as of January 2013, about 3 000 trees have been planted within the mangrove coastal areas which cover a surface area of 2 700 square kilometers.<sup>391</sup>

It is important to note that the Cameroon mangrove forest areas contribute enormously to the socio-economic livelihood of its inhabitants and to a variety of wildlife species. According to Gordon Ajonina, the director of the CWCS:

Mangrove forests are some of the most productive ecosystems in the World and provide breeding grounds for edible fish. The prop roots of mangroves form tangled and intricate buffers that offers the best possible protection for tropical Coastlines.<sup>392</sup>

Furthermore, local councils are fully engaged in the tree planting exercise especially in forest zones in the country. Also, school children are encouraged to each plant a tree to prepare for a sustainable future. The tree planting exercise is also governed by the National Forestry Development Agency (ANAFOR).<sup>393</sup> This is a national forest policy which aims at facilitating the implementation of initiatives laid down by MINFOF, for effective reforestation programmes

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<sup>390</sup> E Verdzeke “Cameroon Parliamentary Tree Planting Project in the North West Region” available at <http://www.leffortcamerounais.com/2012/10/speaker-of-camerouns-national-assembly-launches-tree-planting> (accessed on May 9, 2013).

<sup>391</sup> V Gudmia Mfonfu “Cameroon: Over 3000 Mangrove trees planted in Campo” available at <http://www.africanconservation.org/mangrove-news/item/cameroon-over-3000-mangrove-tree-planted-in-campo> (accessed on May 9, 2013).

<sup>392</sup> Ibid.

<sup>393</sup> The National Forestry Development Agency of Cameroon available at <http://www.thereddeck.org/countries/cameroon/info/resources/organisations/national> (accessed on May 10, 2013).

nationwide. The programme brings together all stakeholders in the forestry sector and provides them with both technical and financial support to soundly manage the country's forest.<sup>394</sup>

Nevertheless, the tree planting exercises have been criticised by commentators, who suggest that maintenance for the proper growth of the trees are lacking.<sup>395</sup> Also, the population in the three northern regions of Cameroon, because of the poor soil condition and the constant drought disasters, calls for the government to assist local farmers groups with fertilizers and other farming tools to support the tree planting exercise.<sup>396</sup>

Furthermore, various partnership programmes have been created with national and foreign non-profit organizations, with the Cameroon government, in the wildlife sector to help reduce the rate of poaching and to educate the local population on sustainable land use in agriculture, as an alternative to the illegal wildlife trade. The MINFOF is working in partnership with the Cameroon wildlife conservation society (WCS) and the Cameroon railways corporation (CAMRAIL) to control the illegal game hunting, game meat consumption 'Bush meat' and the transportation of forest resources illegally, by rail within the country, and across the Central African sub-region.<sup>397</sup> Through this partnership, officials of MINFOF, are allowed to carry out regular control checks on passengers boarding trains from the north of the country to the south or vice versa.<sup>398</sup> These actions, according to reports from the three organizations in partnership, are training forest and eco-guards on ways to tackle illegal hunting and the transportation of forest resources by rail.<sup>399</sup>

#### **4.6.2 Legal Framework of the Wildlife and Forestry sectors of Cameroon**

In Cameroon, the 1994 wildlife, fisheries and forestry law and the December 2012 presidential decree on the forest code modifying some provisions of the 1994 wildlife and forestry law,<sup>400</sup> laid down the legal agenda within this sector. This agenda includes, the preservation of wildlife,

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<sup>394</sup> Ibid.

<sup>395</sup> See Cameroon Mangrove (n 334).

<sup>396</sup> *ibid*

<sup>397</sup> Keeping Bush meat off the Rails in Cameroon available at <http://www.wcs.org/conservation-challenges/natural-resources> (accessed on May 13, 2013).

<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> See The Presidential Decree on the forest code (n 291) above.

fisheries, forest and forest products, access to genetic resources, resources classification and benefit sharing.<sup>401</sup> According to article 12 of the 1994 law:

The genetic resources of the national heritage shall belong to the State of Cameroon. No person may use them for scientific, commercial or cultural purposes without prior authorization. The economic and financial spin-off resulting from their use shall be subject to the payment to the state of royalties, the rate and conditions of which shall be laid down, to the prorate of the value, by an order of the Minister in charge of Finance upon the proposal of the competent ministers.<sup>402</sup>

Another government decree in support of this accession is Decree No 95/531/PM of August 23 1995, fixing the implementation of the forest Act and providing various regulations in the forestry and wildlife sectors.<sup>403</sup> According to this decree, every genetic resource from the wildlife and forestry sectors is to be managed and controlled by the competent authorities of the ministries of wildlife and forestry, the environment and of scientific research and innovation.<sup>404</sup>

Another law within the ministry of livestock, fisheries and animal husbandry (MINPIA),<sup>405</sup> in collaboration with MINFOF, is the regulation of fishing, fishing nets, boats, horsepower among others. Under the ministry of fisheries livestock's and animal husbandry, various conditions have been laid down for the production and sustainable management of fisheries and livestock. The law governing this sector is Decree No. 2001/546/PM of July 30, 2001 providing for the modification of certain provisions of Decree N0 95/413/PM of June 1995.<sup>406</sup> From the coming into force of this decree, various regulations have been put in place by MINEPIA for the sustainable exploitation of the marine living resources within Cameroon's exclusive economic zone (EEZ), which include projects like the regulation of fishing activities, sizes and fishing instruments in the fishing zones of Mbakaou, the Lagdo dam, Mouanko and the Limbe West

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<sup>401</sup> See the Forestry and Wildlife law (n 288) above.

<sup>402</sup> Ibid, article 12.

<sup>403</sup> Prime Ministerial Decree N0 95/531 of August 23, 1995.

<sup>404</sup> Ibid, article 13(13).

<sup>405</sup> <http://www.minepia.gov.cm> official site of the Ministry of Livestock Fisheries and Animal Husbandry of Cameroon (accessed on May 10, 2013).

<sup>406</sup> Decree N0. 2001/546/PM of July 2001 modifying Prime Ministerial Decree N0. 95/413/ of June 1995 on the substantive and procedural requirements of the fishing regime in Cameroon.

Coast fishing areas of Ideanau, cap Cameroon among others.<sup>407</sup> It is, however, important to note that a complete data on those fish species which are heavily harvested from the Cameroon marine environment is lacking. According to FAO Corporate Document Repository, few statistics are available. These include, the ‘palaemon’ white shrimp catch estimated at 15 000 tons per annum, Sardinella at 3 200 tons per annum, mixed fish (with croakers dominating), estimated at a catch of 8 000 tons per annum, while the pelagic fish commonly referred to as ‘bonga’ by local fishermen has no statistics as at the time of writing.<sup>408</sup>

Furthermore, as the population increases exponentially, there is a consequent increase in the demand for fish products which serve as a source of protein and job for poverty alleviation. Thus, MINEPIA has created an enabling environment and provided training to young aspiring fishermen to engage in aquaculture. Under the Ministry of Fisheries, Livestock and Animal Husbandry, at the time of writing, about 20 fish breeding and 12 fish stations have been created across the territory.<sup>409</sup> These centers aim at building the capacity of local fishermen and also educating them on the need for a sustainable fishing practice in the country.<sup>410</sup>

Research has been acknowledged by the government of Cameroon as a necessary tool for implementing the CCD. The government has demonstrated this through the Decree No. 2005/091 of March, 2005.<sup>411</sup> This decree instituted the Ministry of Scientific Research and Innovation (MINRESI) and aimed at creating research centers and research institutions for the fight against land degradation, drought and desertification in the country. Article 32 of the decree makes emphasizes the ‘valorization and vulgarization’ of research projects of the country, especially in the area of food security and the development of new seed varieties to increase agricultural production. The decree also lays down conditions for the granting of research permits. This is contained in government Order No. 00002/MIN/RESI/B00/C00 May 18, 2006.<sup>412</sup> This order

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<sup>407</sup> <http://www.minepia.gov.cm/en/mission-development-and-marine-fishing-craft/80-categorie-en-francais/act> (accessed on May 11, 2013).

<sup>408</sup> <http://www.fao.org/docrep/003/54639E/54639E06.htm#ch6.1> (accessed on May 11, 2013).

<sup>409</sup> See MINEPIA (n 336) above.

<sup>410</sup> Ibid.

<sup>411</sup> Presidential Decree No. 2005/091 of March 29, 2005 instituting the Ministry of Scientific Research and Innovation (hereinafter referred to as MINRESI).

<sup>412</sup> Order No. 00002/MIN/RESI/B00/C00 May 18, 2006 laying down conditions for the granting of research permits.

covers an array of areas which are considered as priority concerns by the government, such as the project on irrigated rice and other crops consumed on a daily basis by the local population.<sup>413</sup>

Other research projects have been identified by the Ministry of Scientific Research and Innovation, in collaboration with MINEPIA, in the Adamawa region of the country. These projects are aimed at providing local fishermen with the technical capacity to fish in a sustainable manner. The project by the mentioned ministries also provided fishing boats, nets, and training on how to preserve fish by smoking, as part of government support to the over 50% of the local population primarily engaged in fishing in the Mbankin and Mbam river.<sup>414</sup> Some commentators like the minister delegate at the Ministry of Fisheries Livestock's and Animal Husbandry, Jean Claude Medou, and authorities from MINRESI confirm that, this is an important project sponsored by the government of Cameroon because it is estimated that, despite the enormous fish species the country is blessed with, Cameroon imports fish costing about 15 billion Franc CFA annually.<sup>415</sup>

Research institutions and training centers have been established in Cameroon under the supervision of MINRESI. These research institutes include the department of agronomy in the universities of Yaoundé I, the University of Dschang, the University of Ngaoundere, the University of Buea and the University of Bamenda. Another major agricultural institute is the Institute of Agricultural Research for Development (IRAD).<sup>416</sup> The aim of this institution is to establish a research territory in the agricultural sector to combat food insecurity and to alleviate rural poverty of the local population, who depend primarily on agriculture for their livelihood. IRAD, as the leading agricultural institution in Cameroon, has created five regional centers, spread across the country. It is estimated that IRAD has developed about 17 species of new food

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<sup>413</sup> Training and Resources in Research Ethics Evaluation available at <http://llearning.trree.org/mod/page/view.php?id+33> (accessed on May 13, 2013).

<sup>414</sup> Cameroon Radio and Television News (hereinafter referred to as CRTV) available at [http://www.crtv.cm/cont/radio\\_Sola\\_fr-php?Field+107438table+radio2](http://www.crtv.cm/cont/radio_Sola_fr-php?Field+107438table+radio2) (accessed on May 13, 2013).

<sup>415</sup> Ibid.

<sup>416</sup> Institute of Agricultural Research for Development (hereinafter referred to as IRAD), translation from the French version available at <http://www.irad-cameroon.org> (accessed on May 10, 2013).

crops which the center own property rights, and five different varieties of cotton species and a number of other cash crops for exports like cocoa, coffee and rubber, among others.<sup>417</sup>

Commentators like J Gaillard Eren Zink *et al.*<sup>418</sup> have made an assessment of Cameroon's research capacity in the area of agriculture under the International Foundation of Science (IFS) and contend that the country has made tremendous efforts to boost its research capacity through the creation of research institutions, although there is still reliance on the former colonial research structures and programs. Therefore, as the world shifts from working towards the MDGs in 2015 to focusing on sustainable development goals SDG, it is imperative that national research centers meet environmental challenges.

#### **4.7 The Ministry of Agriculture and Rural Development (MINADER)<sup>419</sup>**

The Ministry of Agriculture and Rural Development, is also considered as one of Cameroon's instrument for meeting the objectives of the national action plan to implement the UNCCD. Despite the alarming rate of rural poverty in the country, where it is estimated that about 75 percent of the total country population resides in rural areas, according to the FAO 2005 report, about 40% of the population lives below the poverty line.<sup>420</sup> The global food crisis in 2008 was partly said to have been caused by the increase in fuel prices, which caused the scarcity of cereals and brought about civil tension in Cameroon, which prompted the government to give priority to the boosting of agricultural productivity.<sup>421</sup> Through MINADER, the government has put in place structures like the National Council for Statistics (NCS).<sup>422</sup>

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<sup>417</sup> Y Ndula "Cameroon, Argentina Review Agricultural Research ties" Cameroon Tribune of May 6, 2013 available at <http://allafrica.com/stories/201305071009.html> (accessed on May 13, 2013).

<sup>418</sup> J Gaillard Eren Zink et al "Scientific Research Capacity in Cameroon: An Assessment of IFS Support" in Report N0. 5 available at <http://portal.unesco.org/education/fr/files> (accessed on July 16, 2013).

<sup>419</sup> MINADER official website available at <http://www.minader.Cm/fr/projets/detail/LE-PROJET-DE-DeVELOPPEMENT-RURAL-PART> (accessed on May 14, 2013).

<sup>420</sup> T Ayissi "Agricultural and Rural Statistical Development-Capacity Building in Cameroon" available at <http://www.stats.gov.cn/english/icas/papers/p020071114297526255304.pdf> (accessed on May 14, 2013).

<sup>421</sup> National Strategy on Rice Growing in Cameroon (Milling) III (March 2009) available at [http://www.jicogo.jp/english/our\\_work/therr](http://www.jicogo.jp/english/our_work/therr) (accessed on May 14, 2013).

<sup>422</sup> The Cameroon National Council for Statistics (hereinafter referred to as NCS) created in 1993.

The objective of this structure is to monitor projects in response to the Millennium Development Goals and the Poverty Reduction Strategy Paper as the government priority concern is to reduce rural poverty. According to some commentators like T Ayissi<sup>423</sup>, Cameroon's actions in reducing rural poverty in the agricultural sector, considered to be the backbone of the economy, has attracted support from foreign donor organizations, like, the French Cooperation, and also technical support from the Food and Agricultural Organization during the period of 2002 to 2004.<sup>424</sup>

Ayissi's assertion was supported also by the national strategy for rice growing in Cameroon, in the Ministry of Agriculture and Rural Development. According to MINADER, Cameroon's NAP has gained financial and technical support from the World Bank and the IFAD, which signals foreign appreciation of the government's commitment to reducing rural poverty.<sup>425</sup> Furthermore, the government of Cameroon through MINADER has laid down a long-term investment strategy to reduce the importation of rice by encouraging national production to create employment and to meet the increasing demand for rice. This project, worth about Franc CFA 191 billion will increase local productivity, which stood at 65 000 tons in the 2008 estimate, to over 627,250 tons by the year 2018.<sup>426</sup> Furthermore, the Cameroon government has created some regional rice irrigation schemes which aimed at combating food insecurity, which has partly been caused by severe drought, especially in the northern Sahel regions,<sup>427</sup> affecting the cultivation of rice, which relies heavily on rain fall.

However, there has been some disagreement regarding this claim. According to the Cameroon Country Report on the Right to Food 2010,<sup>428</sup> contrary to the positions of Ayissi and the

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<sup>423</sup> See Ayissi (n351) above

<sup>424</sup> See Ayissi (n351) above.

<sup>425</sup> See National Strategy on Rice Growing (n 352) above at 3.

<sup>426</sup> Ibid.

<sup>427</sup> Ibid at 5. These rice farming development organizations includes; The North West Region Upper Noun Valley Development Authority (hereafter referred to as UNVDA), in the West Region, there is the Mbo Plain Society for the Development of Rice cultivation (hereinafter referred to as SODERIM), the Yagoua Expansion and the Modernization for Rice cultivation in the North Region (hereinafter referred to as SEMRY). Translations from the French version.

<sup>428</sup> Country Report on the Right to Food (2010) Cameroon available at <http://www.rtfn-watch.org/uploads/media/A> (accessed on May 11, 2013).

authorities of MINADER,<sup>429</sup> bad governance within the Ministry of Agriculture and Rural Development caused the loss of huge sums of money which was invested in failed agro giant projects in the country.<sup>430</sup> Furthermore, the Early Warning Unit (EWU) and the Market Information System (MIS), created by MINADER to be instruments to provide policy makers, with possible drought and desertification occurrences and the market trend of food stuffs produced and sold, nationally and within the Central African sub-region, are considered as weak.<sup>431</sup> It is recorded that the information obtained from these structures are not well spread to the public.<sup>432</sup>

The drastic reduction in the production of some export cash crops such as coffee, rubber, timber, palm oil and kernel for example, questions the competence of MINADER to serve as an institution to effectively implement the CCD. There is also the absent of a dedicated structure which caters for emergencies concerning food security. This is in conformity with the occurrence of the 2008 civil unrest attributed partly to food shortages as a result of rising prices for basic commodities because the government lacked any emergency plan to address food crisis.<sup>433</sup> However, from the discussion above, it is obvious that the Cameroon Ministry of Agriculture and Rural Development need to set up a plan to effectively implement its various action plans.

Nevertheless, the institutions put in place are part of a long term action plan to successfully meet up with goals one and seven of the MDGs.<sup>434</sup> Furthermore, with Cameroon being one of the leading exporters of cocoa in the world, the cocoa sector has been revamped through government grants to small scale farmer groups. This has seen the increase in cocoa production from an estimated 130.000 tons produced in 2004, to about 200.000 tons produced in 2009.<sup>435</sup>

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<sup>429</sup> See Ayissi and Authorities of MINADER (n351 and 352) above.

<sup>430</sup> Country Report (n 359) above.

<sup>431</sup> Ibid at 13.

<sup>432</sup> Ibid.

<sup>433</sup> Ibid.

<sup>434</sup> The eradication of severe rural poverty and assuring environmental protection contained in (GOALS 1 and 7 of the MDGs).

<sup>435</sup> See Country Report on the Right to Food (n359) above at 22.



Also, it is worth noting that the Cameroon government, through collaboration with the Ministries of Agriculture and Rural Development and that of Scientific Research and Innovation, organizes annual agro-pastoral exhibitions with the giant south regional capital (Ebolowa event: Comice-Agro Pastoral) recording an enormous success.<sup>436</sup> The 2011 event brought local farmers from all corners of the country who are involved in the livestock, crop, fisheries and the food transformation sectors to exchange ideas to make Cameroon an emerging nation with growth in agricultural productivity by the year 2035.<sup>437</sup> Because of the success of the national agro-pastoral show, mini agro exhibitions are organized annually in all the ten regions of the country. These exhibitions aim at empowering local farmers and farming groups, by providing them with farming tools and capacity training to alleviate poverty and to promote SLM practices.<sup>438</sup>

Also, during the event, the president noted that another serious problem of concern in the agricultural sector, is the inaccessibility of most farm to market roads which hinder rural farmers from taking their farming produce to market centers. As a result, an order was passed by the head of state, for the allocation of budget to maintain farm to market roads in all ten regions of the country, before the start of the raining season in the year 2011. Moreover, about one hundred and fifty tractors were offered to farmers groups as government support to boost their productivity.<sup>439</sup>

#### **4.8 Protected Areas, Nature Reserves and Wildlife Sanctuaries<sup>440</sup>**

As a result of the decline in biodiversity globally, Cameroon just like most other countries in the world, is embarking on the creation of protected areas as a measure to conserve biodiversity. Although there is no particular institution dedicated for the conservation of protected areas in

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<sup>436</sup> J Lamm “Yaoundé Snapshot: Investing in people” available at <http://photos.state.gov/libraries/Cameroon/231771/PDFs/snapshort0611spring.pdf> (accessed on May 8, 2013).

<sup>437</sup> Ibid. See also Ebolowa Agro-Pastoral Show: President Paul Biya Speaks available at [http://www.crtv.cm/cont/nouvelles/nouvelles\\_sola\\_fr.php?idField=8689&table=nou](http://www.crtv.cm/cont/nouvelles/nouvelles_sola_fr.php?idField=8689&table=nou) (ed) 18 of January, 2011 (accessed on May 8, 2013).

<sup>438</sup> Ibid.

<sup>439</sup> Ibid.

<sup>440</sup> The IUCN Definition “For Protected Areas” Examining Its Effects on MPA Practice as: “A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature With associated ecosystem services and cultural values.” Vol. 10 N0.5 available at <http://depts.washington.edu/mpanews/MPA102.pdf> (accessed on May 10, 2013).

Cameroon, various decrees, ordinances and policies have been laid down by the government for the protection of biodiversity in protected areas. There are about 40 protected areas in Cameroon, given different appellations like the wildlife sanctuary, national parks, game reserves, zoos, botanical gardens and the biosphere reserves.<sup>441</sup> Among these parks and nature reserves, are the major ones mentioned here because of their size, the variety of species of fauna and flora they harbor, and their contribution to the country's economy in the form of tourist attraction sites. They include: the Waza national park of over 170.000 square kilometers,<sup>442</sup> the Korup national park of 125 900 square kilometer,<sup>443</sup> the Bouba Njidah national park of 220 000 square kilometer,<sup>444</sup> the Douala-Edea Faunal Reserve of 160 000 square kilometers,<sup>445</sup> the Takamanda production forest with an estimated size of 67 599 square kilometer.<sup>446</sup>

#### **4.8.1 The Legal Framework Governing Protected Areas in Cameroon**

As indicated above, at the time of writing there is no particular law in Cameroon for the regulation of protected areas. However, there are legislation, policies and regulations from various ministries, with environmental concern which are used for the conservation of protected areas, especially the aforementioned 1994 Wildlife and Forestry Law. It should be noted that even before becoming an independent state in 1960, Cameroon has expressed concern for the conservation of biodiversity. This commitment is demonstrated through the putting in place of laws creating protected areas like the Bakundu Forest Reserve in decree No. 22 of April 25, 1940.<sup>447</sup> The decree was aimed at protecting the rich numerous species of fauna and flora in that part of the country.

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<sup>441</sup> World Institute for Conservation and Environment "The National Parks and Nature Reserves of Cameroon" available at <http://www.nationalparks-worldwide.info/cameroon.htm> (accessed on May 10, 2013).

<sup>442</sup> Ibid with latitude of 38.199141, longitude 110.915845.

<sup>443</sup> Ibid, latitude 38.493707, longitude 114.916374.

<sup>444</sup> Ibid, Latitude 37.659011, longitude 107.725347 IUCN classification, category III.

<sup>445</sup> Ibid, latitude 111.479911, longitude 37.877673 IUCN classification, category V.

<sup>446</sup> Ibid latitude 37.213035, longitude 118.348259.

<sup>447</sup> Decree N0.22 of April 25, 1940 creating the Bakundu Forest Reserve of the South West Region of Cameroon.

However, some commentators like Lambi *et al.*<sup>448</sup> state that, the local population has invaded this reserve for hunting and farming because it was never taken into account that the villages surrounding this area depended heavily on the forest and forest products for their socio-economic and spiritual wellbeing and no alternative for sustenance were provided. Cameroon has many mountains rich in fauna and flora, and the local communities make use of the volcanic nature of the soil, which favors crop agriculture. Thus, the government and the civil society are focusing on the protection of biodiversity and the promotion of SLM practices within the mountain areas.

#### **4.8.2 The law creating the Cameroon Mountains Conservation Foundation (CAMCOF).<sup>449</sup>**

It is instructive to note that Cameroon is blessed with numerous mountains like the Mount Cameroon, Mount Kupe, Mount Oku, Mount Bapit and the Mandara mountains. Human activities in these areas and their surroundings are said to be a threat to land, fauna and flora. These mountains and the surrounding communities are rich in fauna and flora, combined with a population which is attached to cultures that make use of these natural resources as traditional medicines, food sources, and for sacrifices among others. Therefore the creation of a regulatory instrument, which protects resources within protected mountain areas, was of priority to the Cameroon government. The establishment of this institution has been considered by Uwe Klug *et al.*<sup>450</sup> as a positive step by the government of Cameroon to conserve biodiversity and alleviate poverty of the local mountain forest community people.

The authors also applauded the move by the government, alongside other actors to restore damaged areas of the pipe-line route set up of the Chad-Cameroon pipeline oil project. This project has seen the destruction of nature reserves and the environment in general. The response

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<sup>448</sup> C Mbifung Lambi *et al.* “The Management and Challenges of Protected Areas and the Sustenance of Local Livelihoods in Cameroon” *Journal of Environment and Natural Resource Research*, (Vol, 2, N0.3: 2012) available at <http://www.ccsenet.org/journal/index.php/enrr/article/view/18870> (accessed on April 17, 2013).

<sup>449</sup> The Cameroon Mountain Conservation Foundation (hereinafter referred to as CAMCOF) created by the government of Cameroon in 2001 available at <http://www.camcof.com> (accessed on the 15 of May, 2013).

<sup>450</sup> U Klug *et al.* “Establishing Environmental Funds for Protected Areas in Francophone Africa: Challenges and Opportunities. The experience of the Sangha Tri-National Initiative and proposed Madagascar Foundation for Protected Areas and Biodiversity” available on [http://conservationfinance.org/guide/wpc/wpc\\_documents/Apps\\_02\\_Klug\\_v1.pdf](http://conservationfinance.org/guide/wpc/wpc_documents/Apps_02_Klug_v1.pdf) (accessed on May 16, 2013).

of the Cameroon government, to damages caused to two of its national parks in the course of the pipe-line project, was the creation of the Foundation for Environment and Development in Cameroon christened as 'FEDEC'.<sup>451</sup> According to Klug *et al*, FEDEC has benefited from financial support from the World Bank and other partners of this project, which has been used to empower local community people living along the project sites, through capacity building trainings on biodiversity protection, within national parks.<sup>452</sup>

Although the assertion of Klug *et al*. provides a positive picture of the government in protecting nature reserves and national parks along mountain areas through CAMCOF, there is some disagreement with it. According to Paullete Bisseck,<sup>453</sup> it is wrong to view FEDEC as an organization in charge of the implementation of conservation laws, in the two affected national parks of Campo Ma'an and the Mbam-Djerem due to damages caused by the pipeline project. Furthermore, she suggests that, the amount allocated for the sound follow up of this environmental project is relatively small compared to other challenges. The author explained that, while there are other government and civil society organs responsible for the implementation of FEDEC environmental projects, like the MINFOF and MINEF, the FEDEC is just a funding organ and the lapses of these organizations has resulted in its failure to meet expectations.<sup>454</sup>

Furthermore, the over 3.5 million US dollars provided by the partners of the pipeline<sup>455</sup> is considered insufficient to meet up with the numerous challenges, which include, the compensation to farmers for their damaged farms, capacity building training and need for restoration of the two affected national parks.<sup>456</sup> Thus, it is against this backdrop that the government of Cameroon is embarked on creating to new partnerships, seeking for funding from

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<sup>451</sup> The Cameroon Foundation for the Environment and Development (hereinafter referred to as FEDEC) available at <http://www.fedec.org> (accessed on April 24, 2013).

<sup>452</sup> See U Klug *et al* (n 381) above.

<sup>453</sup> P Bisseck "FEDEC: An Environmental Compensatory Mechanism Set Up within the Framework of a Pipeline Construction Project, Cameroon" available at [http://conservationfinance.org/guide/wpc/wpc\\_documents/Apps\\_08\\_Bisseck\\_v3.pdf](http://conservationfinance.org/guide/wpc/wpc_documents/Apps_08_Bisseck_v3.pdf) (accessed on May 15, 2013).

<sup>454</sup> *Ibid*.

<sup>455</sup> The Cameroon Pipe-line project partners include among others, The Petroleum transporting company Ltd (hereinafter referred to as COTCO), the World Bank, ExxonMobil and the steering committee of the Cameroon Pipeline Follow up (hereinafter referred to as CPSP).

<sup>456</sup> *Ibid* at 2.

developed States parties to the Convention, to meet up with the forest restoration target guideline and other socio-economic activities to reduce severe poverty among forest dwellers where the pipeline project is based.

From the discussion above, it is obvious that despite the shortcomings of FEDEC to protect national parks, nature reserves and the concerns of indigenous people as professed by the World Bank Indigenous People Plan (IPP), through the various projects by FEDEC, the government of Cameroon has demonstrated that constructive negotiations could be undertaken between the government and the indigenous forest minority communities. A case in point is the successful agreement between the Bagyeli forest tribe of the East Region Bepindi locality of Cameroon and FEDEC on behalf of the government and other partners of the Chad-Cameroon Pipeline project.<sup>457</sup>

However, some other commentators have considered the project as a failed one and one which undermines environmental protection. In this light, Korina Horta *et al.*<sup>458</sup> are of the opinion that all the actors in the pipeline project, especially the World Bank and the governments of Cameroon, have failed to institute sound action for protecting the environment against land degradation in the Chad-Cameroon pipeline project. Moreover, according to these authors, oil spill from these pipelines, has caused damages to the environment and also to human health in the localities which play host to it.

It has been estimated that food insecurity is at its peak because of land degradation caused by the continuous oil spillage which is not properly managed. Also, the life expectancy in the locality of Bepindi and its environs is said to have dropped considerably.<sup>459</sup> In the same vein, the United Nations Development Program and its Human Development annual index, estimated a drop in

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<sup>457</sup> J Nelson “Securing indigenous land rights in the Cameroon oil pipeline zone” available at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/cameroonpipelinejul07lowreseng.pdf> (accessed on May 15, 2013).

<sup>458</sup> K Horta et al “The Chad-Cameroon Oil and Pipeline Project: A Project Non Completion Report” available at [http://apps.edf.org/documents.6282\\_Chad-Cameroon-NoI](http://apps.edf.org/documents.6282_Chad-Cameroon-NoI) (accessed on May 17, 2013).

<sup>459</sup> Ibid at 6.

life expectancy, in the localities of the pipeline project in 2005.<sup>460</sup> However, it should be noted that the 2013 indicator ranked Cameroon at the 150th position, which reveals a significant progress made in the fight against land degradation, desertification and drought, which has increased agricultural productivity thereby reducing rural poverty as compared to the 2005 report.<sup>461</sup> The extinction of wildlife species is of serious concern to the Cameroon government and its partners. Thus, wildlife conservation is a priority issue in the NAP of Cameroon. This is because, the wildlife sector contributes in alleviating poverty by providing employment to local forests dwellers as eco-guards. Also, wildlife poaching is said to have been encouraged by some local inhabitants, who complain always of their crops being destroyed by wildlife. Therefore, in order to ensure the promotion of SLM practices and poverty eradication in forests areas, the government and its partners have embarked to combating wildlife poaching which in most cases the method used by poachers, destroys the forests and exposes the land to degradation. Thus, there are two reasons for including measures to combat wildlife poaching in this research which include: Firstly, the fight against wildlife poaching is mentioned in the NAP of Cameroon as priority in implementing the Convention and secondly, most plantation agriculture are being carried out in the forests regions of the country with frequent clashes between poachers and local farmers to the expense of the land.

#### **4.8.3 Synergetic Approach to Combat the Illegal Ivory Trade and Wildlife Species**

As a result of the 2012 report from the World Wide Fund for Nature Conservation (WWF) in Cameroon, by the director for communication, for the fight against the illegal poaching of ivory in Africa, it is estimated that about 12 000 elephants were killed in countries within Central Africa from 2010 to 2012.<sup>462</sup> According to Caron, this illegal trade in African ivory in Central Africa has been facilitated by rebels in neighbouring countries at war. Furthermore, he states that rebel groups like the “Janjaweed of the Sudan and the Lords Resistant Army” conspire with the

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<sup>460</sup> Ibid. See also the United Nations Development Program (hereinafter referred to as UNDP) Human Development Index with life expectancy rate falling from 167 to 173 in 2005.

<sup>461</sup> International Human Development Indicators (2013) available at <http://bdrstats.undp.org/en/countries/profiles/Cmr.html> (accessed on May 18, 2013).

<sup>462</sup> The World Wide Fund for Nature Conservation (hereinafter referred to as WWF) Director for communication for the fight against the illegal trade in African Ivory Jules Caron “Illegal Ivory Trade Funds Rebels in Central Africa” available at <http://www.voanews.com/content/illegal-ivory-trade-funding-rebels-in-central-Africa/16> (accessed on May 19, 2013).

local people, as in the northern region of Cameroon and the eastern areas of the Central African Republic, to poach the ivory which they illegally sell to countries like Thailand and China, to fund their activities.<sup>463</sup>

However as mentioned previously, the tourism sector in Cameroon employs many poor local community members as Eco guards and tourist guides. This falls in line with the requirement of the CCD to eradicate poverty among rural people and also to involve them in NAPs to implement the Convention. This is another reason why it is important for this research to examine the intervention of the government in combating poaching activity.

#### **4.8.4 The Cameroon Military Intervention in Combating Ivory Poaching**

Because of the important role wildlife plays in the country's economy which attracts thousands of tourist annually, and is a major source of foreign earnings to the economy, the over 300 elephants killed (poached) just in the year 2012 in the northern regions of the country necessitated government intervention. The special branch of the Cameroon military known as the Rapid Intervention Battalion (BIR), was dispatched to put a stop to the illegal ivory poaching in the Bouba Njidja National Park. Even though this action has been commended by some international organizations including the European Union,<sup>464</sup> it encountered resistance from the rebel (poachers) in collaboration with the local population.

Furthermore, in resolving this problem, the Cameroon government created a synergy with an authority of the WWF, the Last Great Ape (LAGA), which is a worldwide non-governmental organization operating in Africa to save its wildlife species.<sup>465</sup> Accordingly, LAGA in collaboration with government officials has arrested some ivory poachers with some of them

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<sup>463</sup> Ibid.

<sup>464</sup> C Bearder Member of the European Parliament (MEP): "The Cameroon Army Dispatched to stop the illegal Massacre of its Elephant" (March 22, 2012) available in <http://southeastlibdems.org.uk/en/article/2012/573216/en-pledge-to-help-cameroon-stop-elephant-massacre> (accessed on February 26, 2013).

<sup>465</sup> Report from the Cameroon National Radio and Television (hereinafter referred to as CRTV) 6:30 AM News available at [http://www.crtv.cm/cont/radio/radio\\_sola\\_fr.php?idField=10900&table=radio2](http://www.crtv.cm/cont/radio/radio_sola_fr.php?idField=10900&table=radio2) (accessed on 3 June 2013).

being convicted.<sup>466</sup> The operation also noted that some military and administrative officials involved in the illegal ivory trade have been arrested and prosecuted.<sup>467</sup> Another area of priority to implement the UNCCD as proposed by the Cameroon NAP, is to implement reliable land tenure and reforms system in the country.

#### 4.9 Cameroon Land Tenure and Reforms

Land tenure and reforms are important mechanisms for biodiversity conservation. This is because natural resources are based on land, and also because community tenure ownership could decentralize the concept of the state acting as the manager and owner of land, which makes local communities not to view the conservation of natural resources and sustainable utilization as solely the responsibility of the government, and not also that of local communities. However, just as in most other countries south of the Sahara, where as a result of the colonial era, community land is seen as state property, the respective governments after independence and with population growth still maintained those laws which considered the state as landlord.

In Cameroon, just as is the case with most other African countries, former tenure reforms have engineered social tensions among neighbouring tribes and nations. A case in point is the Sudan<sup>468</sup> conflict fought for over 22 years which has been partly attributed to land. In the Cameroon context, land reforms and community ownership have led to bloody inter tribe and village conflicts such as the Bali-Bawok,<sup>469</sup> Oku-Mbesa and the Bakweri land claim disputes against the state of Cameroon.

Land tenure and the various reforms instituted in most African countries, set in challenges with severe inequalities experienced. According to De Wet,<sup>470</sup> a scholar who has written on land

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<sup>466</sup> The Last Grade Ape (LAGA) “Four Suspected Smugglers Captured in one Week” available at <http://www.bornfreeusa.org/fieldprojects.php?=&3372&more=1> (accessed on 3 June 2013).

<sup>467</sup> Ibid.

<sup>468</sup> It is referred here as the former Sudan because of the advent of the breakaway which saw the creation of South Sudan on July 9, 2011 as the World's newly born state.

<sup>469</sup> C Mbunwe “SDO Says Bali People Burnt Down 300 Houses” available at [http://www.posnewsline.com/2007/03/sdo\\_says\\_bali\\_p.html](http://www.posnewsline.com/2007/03/sdo_says_bali_p.html) (accessed on May 17, 2013).

<sup>470</sup> C De Wet “Land reform in South Africa: a vehicle for justice and reconciliation, or a source of further inequality and Conflict?” (1997) Vol 14:3 Development Southern Africa at 355-362.



reforms in the South African context, the purpose of tenure reforms, is to solve the “injustices and inequalities of past land allocation”. Cameroon is no exception to this with various appellations used in the reformation process.

Land restitution, one of the measures used in reformation, is considered according to A J Christopher,<sup>471</sup> as the restoration to individuals their rights to own land of which they were unjustly disposed, or which they were given only access rather than ownership. Land restitution could take the form of two government actions which are, either the giving back of the land in question to the original inhabitants considered to have been unfairly treated in the allocation process, or the provision of compensation by the government to the individual or communities whose land was expropriated.<sup>472</sup> In Cameroon, land redistribution has been the order of the day with some villages whose land was expropriated by the Germans for agricultural plantation during the colonial era, are applying for restitution, though with enormous challenges which has led to litigations at international tribunals. An example of such indigenous peoples land rights litigation, is that of the Bakweri Land Claim Committee (BLCC) v Cameroon at the African Commission on Human and Peoples Rights in Banjul the Gambia.<sup>473</sup>

Land redistribution aims at providing access to the indigenous people with the power of ownership, in order to improve their standard of living. Thus, in Cameroon, redistribution of land takes the form of, providing land to local communities for resettlement, as a result of the exponential growth experienced by the village or town population. Moreover, land tenure in Cameroon could take several forms, with some considered as unsecured tenure rights, in the form of land renters, settlers, squatters amongst others.

#### **4.9.1 The Legal and Institutional Framework on Land Tenure and Reform in Cameroon**

In Cameroon, the state is regarded as the “custodian” of all lands within the national territory. The Ministry of State Property and Land Tenure (MINDAT)<sup>474</sup> is the principal institution charged with the control and management of state properties and land acquisition. A survey of

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<sup>471</sup> A J Christopher “Land restitution in South Africa, 1991 to 94” (1995) 12 Land use policy at 267.

<sup>472</sup> See De Wet (n 395) at 357.

<sup>473</sup> Cameroon: Bakweri Land Claims Committee v Cameroon (2004) AHRLR 43 (ACHPR2004).

<sup>474</sup> The Cameroon ministry of state property and land tenure (hereinafter referred to as MINDAT).

the evolution of land tenure and communal ownership in the Cameroons<sup>475</sup> indicate that there was the June 17, 1959 land tenure legislation which operated in the French section of Cameroon, while in the British section there was the 1956 land reform. However, in 1972, when the country became a unitary state, there was a harmonized land tenure instrument, the 1974 Ordinance.<sup>476</sup>

As aforementioned, the Ministry of State Property and Land Tenure oversees the tenure system of the country and also collaborates with other sub-organs created by the state, such as the Industrial Areas Development and Management Authority (MAGZI), the Cameroon Real Estate Corporation (SIC) and the Urban and Rural Lands Development and Equipment Authority (MAETUR).<sup>477</sup>

There are also other sectors such as, the local chiefs acting as government intermediaries, to ensure equality in the tenure reforms. Traditional rulers alongside other actors, like the state notaries and accredited surveyors, are responsible for regulating the tenure system within various localities of the country.<sup>478</sup> Away from the issues discussed above, the subsequent paragraph will present the legal and regulatory framework on land tenure and ownership in Cameroon, as a policy action, to ensure sustainable land management practices through sound tenure reforms.

#### 4.9.2 The Provisions of the Constitution of Cameroon on Land Tenure

The Constitution is the supreme law of the land. It has undergone successive revisions from the 1972 to the 1996 Constitution, which is presently applicable.<sup>479</sup> It should also be noted that, though the Cameroon Constitution does not provide for a direct approach to customary land

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<sup>475</sup> The Cameroons here is to draw allusion that there were two separately administered Cameroons by the British and French who after World War One (WW1) in 1914, seized the former German territory and divided it into two separate entities. The two Cameroons only got reunified in 1972 after gaining separate independence from their former colonial masters Britain and France and decided to form a unitary state through a referendum.

<sup>476</sup> Ordinance N0. 74-1 and 74-2 of July 6, 1974 which provided a holistic approach to tenure rights in the United Republic of Cameroon.

<sup>477</sup> The African Development Bank and the African Development Fund “Cameroon: Diagnostic Study for Modernization of the Lands and Surveys Sectors” (2009) available at <http://www.afb.org/fileadmin/uploads/afdb> (accessed on May 17, 2013).

<sup>478</sup> Ibid at

<sup>479</sup> The Constitution of the Republic of Cameroon in Law No. 96-6 of 18 January 1996 Amending the 1972 Constitution.

ownership, there are provisions of the Constitution which address issues concerning tenure reforms and environmental degradation in the country. Article 1.2 of the Constitution states that the State shall "...recognize and protect traditional values that conform to democratic principles, human rights and the law"<sup>480</sup>, while article 26 (d) says that the powers have been vested, regarding "land tenure, state lands and mining and natural resources," on the legislative arm of the government.<sup>481</sup>

However, Ndiva K<sup>482</sup> has expressed concern regarding the weakness of the Constitutional dispensation on communal land tenure and reforms in Cameroon. According to the author, the silence of the Constitution regarding the guarantee of communal land ownership clearly shows the country's unwillingness to guarantee the rights to local communities, of ownership of natural resources, especially land, which their livelihood depend on, as their fundamental human rights which is professed by the supreme law. Thus, this lack of ownership of land by the local community, promotes unsustainable land practice. This is because, the local farming communities do not apply modern methods of farming which prevent land from degradation, because they lack ownership of the land.

The view of Constitutional weakness in protecting the interest of indigenous people is supported by Liz Alden.<sup>483</sup> Liz explains that the Constitution of Cameroon is a passive expression of commitment, to protect the rights of the indigenous people, to ownership of customary lands. Thus, according to the author, with the current Constitutional dispensation on communal land ownership, it becomes difficult for an individual or a community in their own right to take legal actions on any infringement on their ancestral land.<sup>484</sup> From the discussion above, it may be seen that the Constitutional protection on land ownership in Cameroon does not seem to reliably protect the interest of customary land owners, even though studies show that a majority of the

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<sup>480</sup> Ibid article 2(1).

<sup>481</sup> Ibid article 26(d).

<sup>482</sup> N Kofele Kale "Asserting Permanent Sovereignty over Ancestral Lands: The Bakweri Land Litigation against Cameroon" available at <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1114&content=anr> (accessed on May 17, 2013).

<sup>483</sup> L Alden Wily "The Status of Customary land tenure in Cameroon" available at [http://www.fern.org/sites/fern.org/files/cameroon\\_eng\\_internet.pdf](http://www.fern.org/sites/fern.org/files/cameroon_eng_internet.pdf) (accessed on May 20, 2013).

<sup>484</sup> Ibid at 50.

country's population own customary land.<sup>485</sup> Furthermore, despite the fact that there are numerous provisions of the Constitution which may be somewhat used to protect communal tenure's interest, the Constitution only came into force as from 2002, which also portrays its weak commitment to the land reform process, and hence, failing to meet the objective of its NAP in this regard. Therefore, a revision of the present provisions relating to the interest of communal ownership of land would enhance land conservation. This is largely because when people feel they possess ownership on land, there is likelihood for them to implement sustainable agricultural practices.

#### **4.9.3 Land Tenure Legislative framework**

In Cameroon, there is in existence a network of laws governing land tenure processes in the country. Some of these laws come from a cross institutional paradigm like the 1994 forestry law dealt with above, in conjunction with those from the Ministry of Planning, Development Programming and Regional Development (MINPAT),<sup>486</sup> amongst others. These are important mechanisms set up by the government of Cameroon as part of her NAP to implement the CCD in an integrated fashion as one of the Convention's requirements, which states that parties are responsible to "adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought".<sup>487</sup> Thus, various legal instruments have been put in place, which are as follows:

- a) The 1974<sup>488</sup> law regulating and setting conditions on land tenure in Cameroon and its 1977 amendment.
- b) Law No. 19 of 26 November, 1983, Amending Provisions of Article 5 of the 1974 Ordinance.

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<sup>485</sup> Ibid.

<sup>486</sup> Cameroon Ministry of Planning, Development Programming and Regional Development (hereinafter referred to as MINEPAT).

<sup>487</sup> See UNCCD (n6) above article 4.2(a).

<sup>488</sup> See Ordinance 74-1 (n401) above.

- c) Law No. 76/25/ of 14 December, 1976, which institutes regulations governing the operations of Records and Cadastral Surveys in the country especially within rural communities with issues of ancestral land ownership.
- d) Law No. 85-09 of 4 July, 1985, defining conditions and procedures which governs land expropriated by the government for public use, and various compensation to be paid to those whose lands were expropriated. This law is amended by Decree No. 87-1872 of 16 December, 1987, for the effective implementation of the 1985 Law.
- e) Decree No. 76-165 of April, 1976, instituting rules on how to obtain land certificates, as amended by Decree No. 481-2005 of 16 December, 2005, Decree No.2005-481 of 16 December 2005 Amending and Supplementing some provisions of the 1976 Decree.
- f) Decree No. 97-116 of 1997 regulating Pipeline operations.
- g) The Mining Code Regulation in Decree No. 2001-1 of 16 April, 2001.<sup>489</sup>

However, commentators have observed that with the plethora of these laws, there are effects on socio-economic activities and the environment, as the core dual concerns of the CCD, for its implementation.<sup>490</sup> Alden<sup>491</sup> observed that, the 1974 land tenure legislation in its section 1(b) and (14) expresses lack of commitment on the part of government to take into consideration other forms of tenure interest like the right of communities to own land as a property in their own right. The section narrows land ownership to just the public and private ownerships. Furthermore, the author contends that the fundamental land tenure law in the country (the 1974 land law), guarantee excess power to the government, which could be an impediment for individuals, jointly or severally, to bring a successful action against the state even when their land is illegally expropriated and lack land to farm.<sup>492</sup>

Compensation as indicated by the government for communities whose native lands are expropriated, limits itself only to bona fide owners of land which must be effectively occupied,

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<sup>489</sup> See Alden (n408) above, for further illustration of laws lay down governing the Land Tenure and Reform sector in Cameroon.

<sup>490</sup> See UNCCD (n6) above with the Convention stating a dual focus which is to alleviate poverty among the rural masses and environmental protection. See also the Conventions Preamble stating that, “Social problems, like health and nutrition, living standard, food insecurity, poverty, migration, displacement of persons and demographic dynamics”, needs to be addressed by parties in their National Action Plan (NAP).

<sup>491</sup> See Alden (n408) above at 51.

<sup>492</sup> Ibid.

either by a building structure or as a farm land. However this prevents other categories of people like the local Fulani Mbororo herds men and women who because of some customary belief cannot claim ownership of land, from being included in the land compensation structure. In addition, collectively owned ancestral lands, according to critics like Alden, have not been appropriately dealt with, in the land reform law.<sup>493</sup> This is because, the majority of ancestral lands owned especially by forest inhabitants are not per se occupied effectively as farm lands and houses. Hence, this makes them not qualified according to the requirement of the law, to be compensated, in the event of expropriation. A case in point is the Bakweri land claim case.<sup>494</sup>

The acquisition of land certificates is another issue with a lengthy procedure. According to Decree No. 76-165 of 27 April, 1976, the duration and conditions to obtain a land certificate is fixed at a maximum of six weeks from the date of application. Nevertheless, Alden points out, the process is lengthy and subject to bureaucracy, thereby promoting corruption which has become the means by which the rich, who can afford to bribe the authorities in charge, hasten the process, leaving the poor with no legal title for their land.<sup>495</sup> However, recent actions of the government of Cameroon through the Ministry of State, Property and Land Tenure, have reduced the costs and duration of applying for a land certificate.<sup>496</sup> Also, worthy of note, is that the government of Cameroon has instituted other programmes in the country's land reform sector like the poverty reduction strategies to empower the rural communities as a continuation of the 2003 to 2008 PRSP which aimed at poverty eradication guaranteeing land ownership to rural farmers, and the promotion of SLM practices to combat desertification, drought and land degradation.<sup>497</sup>

## 4.10 Conclusion

Within this chapter, the objectives of the Cameroon NAP have been described, while various institution and legal mechanisms instituted by the government of Cameroon, as part of its

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<sup>493</sup> Ibid at 58.

<sup>494</sup> See Kale (n491) above for the complete issue and decision of the Bakweri land claim case.

<sup>495</sup> See Alden (n408) at 59.

<sup>496</sup> In a statement made by the Secretary of State for Territorial Administration ( Jules Njoree Ndongo) available at [http://www.crtv.cm/cont/radio/radio\\_sola\\_fr.php?idField=10825&table=radio2](http://www.crtv.cm/cont/radio/radio_sola_fr.php?idField=10825&table=radio2) (accessed on May 20, 2013).

<sup>497</sup> The Poverty Reduction Strategy Paper (hereinafter referred to as PRSP) 2003 to 2008.

domestic action programs, to implement the UNCCD have been presented. Among these institutions, is the Ministry of the Environment and Nature Protection, with regard to which this chapter has dealt with the issue of capacity building among the rural population, especially within the local forest communities and also the creation of the environmental fund to cater for emergencies like the occurrences of drought. Various government regulations and mechanisms inherent in the Ministry of Wildlife and Forestry as Cameroons national action programmes for the implementation of the UNCCD have also been discussed.

Cameroon protected areas legislation was also discussed in this chapter. The problems facing the sector were dealt with and an array of various programs and policies in the sector which are pursued in order to facilitate the implementation of the UNCCD were presented. Scholars with diverse views concerning the sustainable management of biodiversity around protected areas were referred to and their views on programmes put in place by the government and other civil society organs to improve the livelihoods of poor rural community dwellers and to protect the environment, the dual primary objectives of the Convention were highlighted.

This chapter finally discussed the land reform regime and highlighted various mechanisms set up within the sector to balance the overlapping gap existing between the land reform and conservation, also presenting the institutions and legal instruments established to regulate the land tenure and reform sector. Arguments from different scholars on the reliability of the land tenure sector as the country's domestic action to implement the Convention, were drawn on. One of the key elements, among other issues in the debate, is the failure by the regime to guarantee the rights and simplify the procedures for customary ownership of ancestral land and the over exercise of power by the government concerning land tenure and reforms.

Therefore, it is not a surprise that even though various national policies have been made by the government to convey their commitment in the implementation of the UNCCD, through legislation, policies, regulations and the creation of a number of institutions, what remains evident from the analyses above is that, there is a lack of a strong civil society participation in policies concerning land and forest management. The use of power and too much bureaucracy relating to obtaining land certificates needs to be given attention, while the extinction of wildlife

through the bush meat trade must be addressed in a coherent fashion, by protecting the environment, while taking into account other socio-economic needs. Therefore, there is in this regard, a need for more capacity building and sensitization of local communities especially forest dwellers, to use natural resources in a sustainable manner.

However, despite the above challenges which appear as short-comings of Cameroon in effectively implementing the Convention, it is important to note that some successes have been recorded in the implementation of the Convention through the various action programs put in place. Among these achievements are, the recent government action to simplify the acquisition of land title being led by local councils, coordinated by Divisional Officers (DOs), experts on land tenure reforms and traditional rulers as custodian of community lands. In addition, the creation of annual agro-pastoral shows in the country is a commendable effort on the part of government. This is because through these exhibitions, local farmers benefit from capacity training and small grants which help in eradicating poverty and in sensitizing local communities and other actors working on land about the need to protect the environment, and the sustainable management of land to soundly implement the UNCCD. Finally, it is concluded that, despite the points mentioned demonstrating actions in the Cameroon NAP to implement the Convention, they are not working and hence requiring for more sound actions to be put in place, to effectively implement the Convent



## CHAPTER FIVE

### THE KENYAN NATIONAL ACTION PROGRAMMES

#### 5.1 Introduction

The Republic of Kenya has an estimated population of about 40,512,682,<sup>498</sup> with a high population density indicating that about 250 persons share the same land space which is also used for agricultural activity. The country is situated in the Eastern part of the African Continent and it is bounded on the south east by the Indian Ocean, Somalia on the east, Ethiopia and the Sudan on the north, on the west by Uganda and on the south by Tanzania.<sup>499</sup> The country lies between latitudes 5 degrees North and 5 degrees South and 34 and 42 degrees east of the Equator.<sup>500</sup>

Conflicts within East Africa and the Great Lakes region have been closely linked to the quest for natural resources and the environmental situation in Kenya is no different. According to the United Nations Environmental Programme (UNEP), conflicts in east Africa from across Kenya to the Sudan have been linked to scarce natural resources such as grazing land and to, discrimination in land ownership among other causes.<sup>501</sup> Furthermore, the economy of Kenya, just like most other African States, relies strongly on the exploitation of natural resources for sustainability. It has been estimated that sectors such as forestry, agriculture, water, energy and tourism contribute about 42 per cent of the country's Gross Domestic Production (GDP) annually.<sup>502</sup> These sectors also affect the lives of millions of Kenyans as shown by employment

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<sup>498</sup> The population of the Republic of Kenya as of the 2010 estimate available at <http://www.Kenyapopulation.com> (accessed on May 30, 2013).

<sup>499</sup> J K Ng Eno "Kenya: Country Report to the FAO International Technical Conference on Plant Genetic Resources" (Leipzig 1996) available at <http://www.pgrfa.org/gpa/ken/ken/kenya.pdf> (accessed on May 30, 2013).

<sup>500</sup> Ibid.

<sup>501</sup> The United Nations Environmental Programme (hereinafter referred to as UNEP) (June 2007) in William G. Moseley "Taking Sides: African Issues" 3<sup>rd</sup> ed (2007) at 140.

<sup>502</sup> Kenya's Ministry of State for Planning, National Development and Vision 2030 "Poverty and Environment Initiative" available at <http://www.unpei.org/PDF/Kenya-Policybrief.pdf> (accessed on May 21, 2013).

statistics which demonstrate that these sectors jointly account for about 38 per cent of the general employment rate of the country.<sup>503</sup>

## 5.2 State of the Environment in Kenya

Kenya's environment report of 2003<sup>504</sup> gave an estimation which shows that about 80% of the entire land surface of the country has been exposed or is under threat to drought and desertification. The report also states that revenue from livestock, which is considered to be one of the country's main economic activity, has been heavily affected by severe drought and desertification. Furthermore it is estimated that more than 30% of the country's population, especially in areas primarily known as pastoralist communities, have witnessed loss of livestock, food insecurity and inter-tribal conflicts. The report showed that areas which suffered the most from drought and or desertification include the predominantly farming communities of the Pokomo's and the Ormam and Wardley nomadic pastoralist.<sup>505</sup>

Another area severely affected by the effects of drought in Kenya are the Tana River County. According to the report, government attention is centered on these localities because they accounts for the highest in the country estimated to be over 60%.<sup>506</sup> Moreover, the problems of drought and desertification have been exacerbated by the low annual rainfall which is causing the loss of huge amount of livestock's also culminated by poor farming methods, overgrazing and the invasion of alien species among others.<sup>507</sup> The local northern communities like the Korr and Kargi, predominately pastoral nomads, also face acute food insecurity which has been facilitated by the over-exploitation of natural vegetation due to drought and desertification.<sup>508</sup> Commentators Hassan and Oba have contended that land degradation and loss of vegetation

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<sup>503</sup> Ibid.

<sup>504</sup> State of the Environment Report of Kenya 2003.

<sup>505</sup> Ibid.

<sup>506</sup> Ibid.

<sup>507</sup> K Stranc "Managing Scarce Water in the face of Global Climate Change: Preventing Conflict in the Horn of Africa" available at <http://www.hofstralawreview.org/tag/volume-39> (accessed on May 25, 2013).

<sup>508</sup> UNCCD Domestication WDCD-Progress in the Preparation to Commemorate the World Day to Combat Desertification in Kenya available at [http://www.unccd.int/Lists/SiteDocumentLibrary/WDCD\\_WDCD2012\\_kenya.pdf](http://www.unccd.int/Lists/SiteDocumentLibrary/WDCD_WDCD2012_kenya.pdf) (accessed on May 26, 2013).

cover in the northern regions of the country is as a result of the excessive tree felling by local pastoralists for timber to fence their flocks for protection against theft.<sup>509</sup>

Hassan and Oba further explain that the practice of removing vegetation cover and the constant disturbance of the soil, have made the northern regions of Kenya more vulnerable to the effects of desertification, land degradation and drought.<sup>510</sup> The remainder of this chapter will present what the country is required to do by the UNCCD, the objectives of the NAP of Kenya and also what it proposes to do in its domestic actions to implement the Convention. Subsequently, some programmes undertaken by accredited civil society organizations to assist in the implementation will be discussed, in addition to an analysis of the legal and institutional mechanisms the purpose of which is to ensure the meeting of the objectives of the Kenya's NAP.

The Convention requires Kenya to establish in its NAP for its implementation, the creation of mechanisms that will facilitate actions that reduces conflicts among the local population on the use of land, the institution of poverty reduction programmes, the maximization of the use of resources, and the creation of synergy among other environmental Conventions.<sup>511</sup> In addition, Kenya proposed to institute in its NAP priority areas which include; the reclaiming of severely degraded areas, rehabilitating partly degraded areas, reducing further degradation of affected areas and conserving areas that are not yet degraded.<sup>512</sup> Furthermore, the objectives of the NAP include (without being limited to) the following:

- a) development of mechanisms which give effect to sound implementation of those activities which are identified and flexible for sustainable land management practices;
- b) mainstreaming of the priority areas identified in the NAP into national development initiatives;
- c) creating an environment which facilitates effective participation of local communities in dry land areas and other actors involve in the process;

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<sup>509</sup> Hassan G. Roba and Gafu Oba "Understanding the Role of Local Management in Vegetation Recovery Around Pastoral Settlements in Northern Kenya" available at <http://link.springer.com/content/pdf/10.1007%2Fs00267-013-0020-1.pdf> (accessed on May 25, 2013).

<sup>510</sup> Ibid.

<sup>511</sup> National Action Plan: "A framework for combating Desertification and Drought in Kenya" available at <http://www.unccd.int/ActionProgrammes/Kenya> (accessed on November 24, 2013) p. 9.

<sup>512</sup> Ibid at p.23.

- d) providing for financial resources to ensure that drought occurrences are efficiently taken care of, and;
- e) putting in place sound legal, policy and institutions which are properly coordinated and effectively managed.<sup>513</sup> While Kenya has submitted reports on the successes and challenges and other future measures it aims to implement in the NAP to effectively meet the objectives of the Convention,<sup>514</sup> the discussion below will focus on analyzing the NAP of Kenya through its different institution legal and policy frameworks in meeting and on analysing how the objectives of the national action programme is met by the projects instituted.

### **5.3 Kenya's New Constitutional Dispensation<sup>515</sup>**

The new Kenyan Constitution is hoped to address the numerous challenges that impeded the previous constitution and to lay down sound provisions which include all aspects of environmental protection. Moreover, the new fundamental law of the land is expected to speed up the implementation of various earmarked government initiatives for the protection of natural resources especially the fight against drought and desertification. Also, as contended by Bobby and Nyambura, although the new constitution is not expected to provide immediate solutions to all the problems faced by Kenyans, especially with respect to conflicts on land ownership and other natural resources, the Constitution's implementation will institute frameworks that will resolve these conflicts.<sup>516</sup> Along the same lines, Mwenda and Kibutu suggest that, given the fact that the environment supports all life on earth, there is a need to lay down a solid constitution and other legal mechanisms which are stable because the environment and natural resources in

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<sup>513</sup> Ibid at p. 24.

<sup>514</sup> Performance Review and Assessment of Implementation System: 4<sup>th</sup> Reporting and Review Cycle-2010 Report for Kenya shows that Kenya has submitted its report to the Convention's Secretariat in the year's 1999, 2002, 2004, and 2010 available at <http://www.unccd-prais.com/Data/Reports> (accessed on November 28, 2013).

<sup>515</sup> The Constitution of the Republic of Kenya August 2010.

<sup>516</sup> B Mkangi and N Githaiga "The New Kenya's Constitution and Conflict Transformation" (2012) available at <http://www.issafrica.org/uploads/232.pdf> (accessed on May 26, 2013).

particular can only be protected when these legal instruments are stable and subject to change when necessary from general support.<sup>517</sup>

The Constitution has provided for a number of provisions showcasing the government commitments to implement the UNCCD. Prominent of these provisions in the new Constitution are the following:

- Article 60 1 (a) says access to land must be equitable to all Kenyan citizens;
- (c) the sustainable use of natural resources and the productive management of land resources
- Article 60 (f) eliminate all forms of discrimination in law, customs and practices related to land and property in land:
- Article (g) provides for land disputes to be settled through recognized local community initiatives consistent with this Constitution;
- Article 69 (b) deals with forest protection stating that “The State shall work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya”;
- Article 69 (f) contains provisions of an environmental impact assessment (EIA) as a continuation to the already existing two regulations which governs the EIA regime in the country.<sup>518</sup>
- Article 69(d) of the new Constitution expresses the necessity for public participation; according to this provision, “[T]he State shall encourage public participation in the management, protection and conservation of the environment”.<sup>519</sup>

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<sup>517</sup> A Mwenda and Thomas N. Kibutu “Implications of the New Constitution on Environmental Management in Kenya” (Journal of Law Environment and Development) available at <http://www.lead-journal.org/content/12076.pdf> (accessed on May 27, 2013).

<sup>518</sup> Before the present Constitutional dispensation on EIAs in Kenya, two laws were in application and still continue to exist but applied jointly with the provisions of the new Constitution which relates to EIA. Those two legislations include; the Environmental Management and Coordination Act (hereinafter referred to as EMCA) in Government Gazette No. 8 of 1999 as supplemented with GG Act 1 of January 2000, and GG No. 101 with its supplements of Law No.56 and No. 31, 13 of June 2003 containing (Kenya’s EIA and the Audit regime).

<sup>519</sup> See Mwenda and Kibutu (n432) above at 82.

With regards to this Constitutional expression of the implementation of the CCD, commentators have discussed the provisions concerning environmental protection and a sustainable land management and tenure reforms. Thus, with reference to the CCD which requires for parties to strengthen already existing national laws or by enacting new a legislation where necessary for its effective implementation, some observers like Cornella Glinz consider land tenure as a critical aspect for a sustainable development in Kenya. According to her, the provisions of the former Constitution did not clearly express the right to own land by women in particular and failed to clearly distinguish between various categories of land.<sup>520</sup> This is because Chapter 8 of the old Constitution only provided a broad description of land ownership merely referring to land as “trust land.”<sup>521</sup> Moreover, with the new Constitution including the rights of women owning land, is considered as a positive step towards meeting the objectives of the NAP. This is because gender balancing and involving women in SLM issues is a requirement for Kenya to implement in its NAP, and it is one of the operational objectives of the UNCCD ten year Strategy.

However with the new Constitutional dispensation, Chapter five in article 61 provides for a separate classification of land in different distinct categories which include: private land, public land and community land as opposed to the former, which generalized there three into somewhat lose system.<sup>522</sup> Moreover, the present Constitution lays more emphasis on the protection of forest which have suffered severe decline and stand at just 5.9 per cent of the country. According to Mwenda et al. the new Constitution in article 69 (b) expresses the government of Kenya’s recognition of her responsibility to soundly protect the forest and wildlife species while protecting the socio-economic and cultural rights of indigenous people.<sup>523</sup> Furthermore, they are of the opinion that, the fact that the new Constitution gives more attention to the EIA regime in Kenya demonstrates the country’s commitment in implementing the UNCCD through the protection of the environment while carrying out developmental projects.<sup>524</sup>

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<sup>520</sup> C Glinz “Kenya’s New Constitution” available at [http://www.kas.de/wf/doc/kas\\_22103-1522-2-30.pdf?110412154848](http://www.kas.de/wf/doc/kas_22103-1522-2-30.pdf?110412154848) (accessed on May 26, 2013).

<sup>521</sup> Trust Land according to the former Kenyan Constitution was referring to native lands under colonial.

<sup>522</sup> See (n 434) above.

<sup>523</sup> See Mwenda and Kibutu (n 432) above at 81.

<sup>524</sup> Ibid.

Public participation in environmental governance as professed in article 69 (d) of the new Kenyan Constitution is in accordance with the CCD which requires parties to the Convention to involve the local population, especially those living in areas seriously affected by desertification or drought in implementing the Convention. Thus, with the emphasis on public participation in the new Constitution communicates the recognition of the importance of involving local pastoralist and other farming groups in discussions on sustainable land management in the country. It is clear that these provisions can only be meaningful if they are implemented by all Kenyans, including the government and other stakeholders.<sup>525</sup>

## 5.4 The Legal Framework

According to article 9 of the Convention to Combat Desertification and Mitigate the Impact of Drought, parties to the Convention are expected to institute National Coordinating Boards (NCBs), which will be responsible for facilitating the Convention's implementation through the preparation, implementation and evaluation of various NAPs.<sup>526</sup> Furthermore, just like the institutional frameworks which act as bodies and structures to facilitate the implementation of the Convention, the legal mechanisms are also important instruments guiding and facilitating the Convention implementation process.<sup>527</sup> Thus the Kenyan National Action Programme has listed its legal instruments for implementing the Convention, which include the following:

- a) The National Water Conservation and Pipeline Corporation Order of 1988 contained in Law No. 270 of 1988 in the State Corporations Act in Cap 446;
- b) The Water Act in Cap 372;
- c) Wildlife Conservation and Management Act in Cap 376;
- d) The Forests Act in Cap 385;
- e) Science and Technology Act in Cap 250 of 1977 and;
- f) The Land Act in Cap 287.<sup>528</sup>

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<sup>525</sup> Ibid at 82.

<sup>526</sup> See the UNCCD (n6) above article 9.

<sup>527</sup> The Republic of Kenya "Ministry of Environment and Natural Resources: National Action Programmes" (February 2002) available at <http://www.unccd.int/ActionProgrammes/Kenya-eng2002.pdf> (accessed on May 27, 2013).

<sup>528</sup> Ibid at 16.

The indicated legal instruments can only be effective if there are sound institutions set up to administer and enforce implementation of the UNCCD. The different institutional instruments to guide the Conventions implementation will inspire our discussion in the paragraphs below.

## **5.5 The National Environment Management Authority (NEMA)<sup>529</sup>**

As mentioned above, parties to the CCD are required to create a national coordination body to serve as a focal point to oversee the various activities under the country's NAP in order to implement the Convention. Kenya's coordinating body is the National Environment Management Authority (NEMA), which is charged to regulate environmental issues in the country. Created in 2003, from the former National Environment Secretariat, NEMA is responsible for the smooth functioning and the implementation of the three sister Conventions that were born in Rio. It is therefore responsible to ensure that the CCD is implemented through Kenya's NAPs.<sup>530</sup> Thus, the Kenyan NEMA launched a research project in the city of Nairobi on the rampant disposal of plastic bags which becomes solid waste and causes harm to the environment due to the difficulty with which plastic waste decomposes. In a statement by NEMA's<sup>531</sup> chief enforcement officer, Robert Orina, it was suggested that environmental degradation from plastic waste is not limited to the city of Nairobi<sup>532</sup> but is a challenging situation occurring across the country.

As a result, NEMA proposed a ban on the production of tiny plastic bags in 2005 as a means of protecting land and the atmosphere from pollution but this encountered firm opposition from those enterprises engaged in the business. There have also been other problems. According to one of the plastic bag recycling operator Geoffrey Okora:

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<sup>529</sup> Kenyan National Environmental Management Authority (hereinafter referred to as NEMA) 2003.

<sup>530</sup> Paper on National Capacity Self-Assessment (NCSA) on The United Nations Convention to Combat Desertification (UNCCD) (6-8 March 2005) available at <http://www.thegef.org/gef/sites/thegef.org/files/docum> (accessed on May 17, 2013) at P.15.

<sup>532</sup> Statement by Robert Orina "Kenya: Plastic bags and convenience costing the earth" available at <http://www.afronline.org/?p=3221#more-3221> (accessed on May 26, 2013).



We buy plastics for recycling; however, the existing organizations are not able to absorb the huge amount of plastics in the environment. Furthermore the profit margin gained from recycling plastics is minimal compared and most organizations would rather not venture in this area. And when they do, they prefer to limit themselves to hard plastics as opposed to the flimsy plastic.<sup>533</sup>

Other framework programmes have been put in place by NEMA aiming at sustainable land management and environmental conservation. Among these programmes, is natural resource management sponsored jointly by the State of Kenya and the Danish government to run from the year 2012 to 2014.<sup>534</sup> Thus, this framework programme involves various ministerial departments committed to the implementation of the CCD. Among the three strategic components of this action programme is the Arid Land Resource Management Strategy (ALRMS). This strategy aims at strengthening the capacity of local communities to initiate and implement rural action programmes to combat desertification and to mitigate the impact of drought.<sup>535</sup> In addition, NEMA has created an information network system. The system is aimed at providing the public and different ministerial departments with information on environmental issues which will act as a guide to decision making and policies concerning the environment.<sup>536</sup> Agricultural development being one of the focus areas in the NAP of Kenya, the discussion below begin with analysing the NAP programmes under the Ministry of Agriculture.

## 5.6 The Ministry of Agriculture

As mentioned earlier, Kenya's agricultural sector is at the heart of the country's economy. The country's economy is largely agrarian type and affects the majority of its population either directly or indirectly through agricultural practices. Also, over three quarter of the population of the country resides in rural areas and depends on agriculture for their sustainability. Thus,

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<sup>533</sup> Ibid statement by Geoffrey Okora of the Ramji Haribha Devani Ltd involve in recycling plastic wastes in Kenya.

<sup>534</sup> The National Environment and Management Authority-Kenya (NEMA) available at [http://www.nema.go.ke/index.php?option=com\\_content&view=article&id=154&Itemid=](http://www.nema.go.ke/index.php?option=com_content&view=article&id=154&Itemid=) (accessed on May 22, 2013).

<sup>535</sup> Ibid.

<sup>536</sup> Ibid.

according to Alila and Atieno,<sup>537</sup> much of the government of Kenya's policy framework to eradicate poverty, particularly in rural communities, in response to the requirements of the CCD is in the agricultural sector.

In addition, there are a number of policies which have been put in place in the agricultural sector aimed at strengthening the sector to empower local farmers and increase their standard of living. These policies include the 2004 Strategy for Revitalizing Agriculture (SRA), the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC), the Millennium Research Village, and the Poverty Reduction Strategy Paper (PRSP) among others.<sup>538</sup>

## **5.7 Policy Framework in the Ministry of Agriculture**

While the above mentioned policies may be considered to have been very successful in boosting the country's agricultural sector by alleviating poverty among rural communities, particularly farmers, by involving the community to have a say in decisions concerning the country's agricultural sector, some critics still question the competence of these programs to galvanize growth in agriculture especially in arid dry land areas.<sup>539</sup> Thus, it is important to analyse some of these policies. The selection of programmes for discussion below, is guided by the criticism and or the euphoria which they met when they were being put in place.

### **5.7.1 The Millennium Villages Programmes**

The Millennium Village Programmes grew out of a process initiated by world leaders in 2000. As a result of the alarming rate of growth in rural poverty, land degradation, inadequate sanitation, and disease, it had become apparent to the world that these problems needed to be tackled under streamlined headings as commitments to these developmental goals for the period

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<sup>537</sup> P. O. Alila and Rosemary Atieno "Agricultural Policy in Kenya: Issues and Processes" available on <ftp://ftp.fao.org/TC/CPF/Countries/Kenya/Agricultural%20policy%20in%20kenya%20ISSUES> (accessed on May 21, 2013). See also Republic of Kenya Report 2005 for more of the estimates of the population of rural communities.

<sup>538</sup> Ibid at 30.

<sup>539</sup> Ibid.

up to the year 2015; these goals are referred to as the Millennium Development Goals (MDGs).<sup>540</sup> However, in 2005 during the process of reviewing the progress made, it was apparent that identifying the goals was not enough and there was a need to look for ways of implementing these target goals because rural settlements, especially in Africa, were still facing challenges in meeting them.<sup>541</sup> Thus world leaders came out with what is referred to as the Millennium Villages Projects focusing in over eleven villages in Africa experiencing extreme poverty. The project is aimed at, among other things, initiating rural development projects which involve empowering the village community people in order to eradicate poverty in their localities. The village of Sauri in Kenya is one of the beneficiaries of the MVPs and forms a case study for the present discussion.<sup>542</sup>

The Sauri MVP, because of its successes in improving the standards of living of members of this community, it has been described by commentators as a successful experience for other countries to emulate.<sup>543</sup> The Sauri MVP is coordinated by the Kenyan Ministry of Agriculture as one of its partnership programmes aiming at eradicating poverty in rural areas. It is a policy program which has provided fertilizers to local farmers and farming groups and has seen an increase in the production of staple foods like maize which is now not only grown for local consumption, but in sufficient quantities that there is also a surplus for sale.<sup>544</sup> The MVP Sauri experience, involved the local population in capacity training workshops to educate them on the use of sound land management practices. Further, it is estimated that the health conditions of the community has improved drastically with a reduction of about 75 per cent of malaria cases due to the distribution of treated anti mosquito bed sleeping nets.<sup>545</sup>

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<sup>540</sup> The Millennium Development Goals (hereinafter referred to as MDGs) are; to Eradicate Extreme Poverty and Hunger, Achieve Universal Primary Education, Promote Gender, Equality and Empower Women, Reduce Child Mortality, Improve Maternal Health, Combat HIV/AIDS, Malaria and other Diseases, Ensure Environmental Sustainability, and the Global Partnership for Development available at <http://www.un.org/millenniumgoals/action-achive-shtml> (accessed on May 25, 2013).

<sup>541</sup> P Sanchez "The Transformation from Sub-Subsistence Farmers into Small- Scale Entrepreneurs" London (November 2, 2006) available at <http://www.odi.org.uk/Sites/odi.org.uk/files/odi-assets/events-documents/1381.pdf> (accessed on May 26, 2013).

<sup>542</sup> Ibid.

<sup>543</sup> J Bassoul Mojon Comments from Kenya's former PM Raila Odinga "The MVP have opened up the eyes of people" available at <http://www.millenniumvillages.org/field-notes/the-mvp-have-opened-up-the-eyes-of-people> (accessed on May 26, 2013).

<sup>544</sup> See Sanchez (n465) above.

<sup>545</sup> Ibid at 26.

As required by the CCD for parties to institute a “bottom up” approach paradigm in their NAP, the Millennium Village Programmes in Kenya have made use of the Integrated Rural Development (IRD) system of approach, which after three years of its inception, is confirmed by commentators to have successfully transformed the lives of many rural Kenyans, especially in the growth of agricultural productivity, which serves as food security.<sup>546</sup> Thus, Saldana contends that the MVP in Sauri has transformed the area from what used to be a poverty rural setting to a locality where the standards of living of the community have been seriously improved by the numerous social structures put in place with participation from the villagers.<sup>547</sup>

### 5.7.2 The Medium Term Plan (MTP)

The Medium Term Plan is a policy program under the Kenyan Poverty Reduction Strategy Paper jointly supported by the International Monetary Fund (IMF), the World Bank and the government of the Republic of Kenya, which constitutes the Vision 2030 for economic growth and poverty reduction.<sup>548</sup> This is a long term programme to be realized through different phases of the MTP, of which the first of the five phases in eradicating rural poverty and to stimulate economic growth was from 2008 to 2012.<sup>549</sup> The MTP is considered as a blueprint which coordinates the country’s programmes especially in the agricultural sector, to eradicate poverty and make the country an emerging economy with its citizens enjoying the benefits.<sup>550</sup>

The first phase of the MTP identified the various sectors earmarked as priority areas to stimulate the country’s Gross Domestic Production (GDP) according the government of Kenya. These sectors include:

- a) The agricultural sector;

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<sup>546</sup> The Earth Institute, Columbia University “Harvests of Development in Rural Africa: The Millennium Villages After Three Years”

<sup>547</sup> G Saldana “Inside Kenya’s Sauri Millennium Village: a Beacon of Progress in Integrated Development” (February 20, 2013) available at <http://www.millenniumvillages.org/field-notes/inside-kenya-s-sauri-millennium-village> (accessed on May 26, 2013).

<sup>548</sup> The Republic of Kenya’s “Poverty Reduction Strategy Paper” available at <http://www.imf.org/external/pubs/ft/scr/2010/cr10224.pdf> (accessed on May 22, 2013).

<sup>549</sup> Ibid.

<sup>550</sup> The Kenya Vision 2030 available at <http://www.cbdtglobal.org/images/upload> (accessed on May 27, 2013).

- b) Tourism;
- c) Wholesale and Retail Trade;
- d) Information and Communication Technology (ICT) and Business Process and;
- e) The Manufacturing sector.<sup>551</sup>

According to government sources in the information, communication and technology (ICT) sector there has been an increase in the use of modern means of communication by Kenyan citizens especially the cellular telephone, local community radio stations with programmes on SLM practices in the rural areas, promoting an information based economy as a means to eradicating poverty, land degradation, desertification and increasing economic growth.<sup>552</sup> The ICT medium term plan cuts across various government departments like the Ministry of Agriculture, facilitating the dissemination of information of sound agricultural practices and land use among others.<sup>553</sup> Furthermore, as a result of the MTP, there was an increase in growth of the country's financial sector from what used to obtain in 2008, which stood at 2.7 per cent, to an 8 per cent increase in three years from 2009 to 2011, an increase in the number of training centers of higher learning to train agricultural technicians among other professionals, and an increase in the number of children easily accessing primary education and of students of higher learning in the country.<sup>554</sup>

Nevertheless, despite the successes and the importance indicated of the MTP in the agricultural sector as a policy to stimulate growth and reduce poverty, there are some identifiable setbacks and challenges hampering the implementation of the Medium Term Plan in Kenya. Firstly, as Alila and Atieno<sup>555</sup> indicated, the MTP programmes are failing to meet their objectives because of the past land ownership policy in the country. According to them, most of the rural population is in acute poverty due to landlessness, which is caused by the politically opportune elite class owning vast hectares of agricultural land at the expense of the rural poor masses. Secondly, the social inequality in some cultural practices of many rural communities in Kenya restricting

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<sup>551</sup> Ibid at 4.

<sup>552</sup> Republic of Kenya "Information and Communication Technology: Medium Term Plan for Kenya Vision 2030" available at <http://marsgroupkenya.org/pdfs/201> (accessed on May 27, 2013).

<sup>553</sup> Ibid at 14.

<sup>554</sup> See Kenya Vision 2030 (n274) above at 9.

<sup>555</sup> See Alila and Atieno (n556) above at 23.

women in particular from owning land also hinders the Medium Term Plans to produce a meaningful tool for rural poverty reduction.<sup>556</sup>

### **5.7.3 Kenya Rural Development Strategy**

The Kenya Rural Development Strategy (RDS) is a policy instrument linked to the Ministry of Agriculture aiming at reducing extreme poverty in the rural communities of the country. The programme is an instrument designed to provide rural farmers with incentives and to build capacity regarding the sustainable use of land among other issues. The strategy goes beyond other sectors of the country's economy.<sup>557</sup> The RDS, under the auspices of the Ministry of Agriculture and other government departments, launched the Rural Electrification Programmes (REP). The programmes aimed at reducing rural poverty by improving the capacity of local farmers and small and micro enterprise (SMEs).<sup>558</sup> It is according to Kirubi et al,<sup>559</sup> the availability of electricity which has enabled local farmers to increase agricultural productivity and food storage in the rural locality of Mpeketoni by allowing them to preserve produce like milk and vegetables and safely take it to market. Small and medium sized enterprises also realized an increase in their turn over while providing employment to youths and women in the locality thereby reducing severe rural poverty which is in accordance with one of the focus of the CCD objectives and its ten year strategy.

Furthermore, education which it is believed to be the main element to transform rural communities by reducing the poverty level in villages also saw an increase. Through the Rural Electrification Programme in the Ministry, agricultural training centers and other institutions were developed which enabled students to compete successfully in national examinations with their peers in urban centers.<sup>560</sup> According to teachers and local administrative officials in institutions in the rural locality of Lamu:

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<sup>556</sup> Ibid.

<sup>557</sup> J K Nyoro "Agriculture and Rural Growth in Kenya" (June 2002) available at [http://fsg.afre.msu.edu/Kenya/o\\_Papers/Agricultural\\_growth\\_in\\_kenya.pdf](http://fsg.afre.msu.edu/Kenya/o_Papers/Agricultural_growth_in_kenya.pdf) (accessed on May 27, 2013).

<sup>558</sup> C Kirubi et al. "Community-Based Electric Micro-Grids Can Contribute to Rural Development: Evidence from Kenya" (2009) vol 37 Journal of World Development at 12.

<sup>559</sup> Ibid.

<sup>560</sup> Ibid.

In national examinations, students get tested about what is assumed to be ‘Common Knowledge’ by examiners living in cities like Nairobi. For instance, last year (2004) there was a question on the colors and workings of traffic lights. How can this be common knowledge in places like Lamu without roads, let alone vehicles? We find TV as the only medium for exposing our students to such ideas.<sup>561</sup>

Accordingly, the Rural Electrification in the Mpeketoni and Lamu village communities was guided by the Energy Act of 2006.<sup>562</sup> The Act stressed the creation of the Electrification Programme Fund in the rural communities of Kenya. It also encourages local community initiatives by generating electricity with the support from the government and other stakeholders in order to reduce rural poverty and increase the energy efficiency in villages which in accordance with the CCD, alleviates rural poverty and gave local farmers the opportunity to implement SLM practices through the use of power in irrigation. The agriculture sector shares close links with the wildlife and forestry sectors in Kenya in terms of their policies and programmes in the implementation of the CCD. Thus, the latter will be the focus of the discussion below.

#### **5.7.4 The National Agriculture and Livestock Extension Program 2004**

The National Agriculture and Livestock Extension Program (NALEP)<sup>563</sup> is a joint program sponsored by the government of Sweden and the Kenyan government in three main areas, which include; the Environment and Natural Resources, Democratization and Human Rights and Urban Development.<sup>564</sup> The policy aimed at providing solutions to the difficulties faced in the country’s agricultural sector and to the development of rural areas. Against the backdrop of the fall in livestock productivity in Kenya, the extension program also aimed at providing rural farming groups with technological training to meet up with modern methods of farming to increase livestock productivity to reduce high prices in dairy products by fighting food insecurity.

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<sup>561</sup> Ibid at 9.

<sup>562</sup> Kenya Energy Act of 2006 (hereinafter the Energy Act) available at <http://www.erc.go.ke/energy.pdf> (accessed on May 28, 2013).

<sup>563</sup> The National Agriculture and Livestock Extension Program (hereinafter referred to as NALEP) 2004 available at <http://www.worldwide-extension.org/Africa/Kenya/s-kenya> (accessed on May 28, 2013).

<sup>564</sup> Ibid.

Livestock is an important contributor to the Kenya's economy with a majority of the local population involved in the activity mostly in the arid and semi-arid dry land regions, especially in the Rift Valley Province of the country.<sup>565</sup>

The Livestock extension programme carried out capacity building training workshops in rural arid areas of the country. Areas which benefited from this programme include the Nakuru and Narok rural areas, which suffered from severe drought. About 80 per cent of farmers from these communities as of February 2013 had benefited from training from experienced staff of the extension services in both the public and private sector.<sup>566</sup> The capacity training focused primarily on the improvement of the production of goat, cattle, sheep stock, and in increase in dairy products to meet with the increase demand in the country and abroad.<sup>567</sup>

Other important work done on ground by NALEP, which according to Martin Mudar,<sup>568</sup> has been successful, is the shift towards a bottom up approach driven by programmes which involve rural farming groups taking part in decisions aimed at boosting livestock agriculture in the country. This is in contrast to other failed attempts previously undertaken solely by the Kenyan government. Furthermore, local farming groups have come together to form a Common Interest Group CIG in order to easily access funding from the government and other external donors like the Food and Agriculture Organization FAO.<sup>569</sup>

Nevertheless, Zander *et al.*<sup>570</sup> have a contrary view concerning the accessibility of financial credits under the NALEP. According to them, local individual farmers and farming groups have been faced with a lack of finance to successfully carry out livestock agriculture, partly because of the difficulties in meeting the requirements for accessing funding due to political bottle necks; accordingly, rural advocacy programmes under the NALEP have been recommended by

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<sup>565</sup> K. K. Zander et al. "Constraints to effective adoption of Innovative Livestock production technologies in the Rift Valley (Kenya)" (2013) vol 96 *Journal of Arid Environments* at 14.

<sup>566</sup> Ibid at 17.

<sup>567</sup> Ibid.

<sup>568</sup> M Mudar Hill "National Agricultural Livestock and Extension Programme (NALEP)" Un-published Bachelors Thesis (2011) available at <http://hj.diva-portal.org/Smash/get/diva2:421399/FULLTEXT01> (accessed on May 29, 2013).

<sup>569</sup> Ibid at 31.

<sup>570</sup> See Mudar (n498) above at 31. The Advocacy programme initiated by NALEP was implanted by the Kenyan Forestry Action Network (FAN), and the Wildlife Society of East Africa and Resource Project Kenya (PRK).



commentators, as vital tools for the implementation of the CCD, because of its successes in conserving Kenya's forest and land from unsustainable human practices.

## 5.8 The Ministry of Forestry and Wildlife

The Ministry of Forestry and Wildlife in Kenya is one of the high priority sectors of the government in terms of the country's NAPs to implement the Convention.<sup>571</sup> Among the objectives of the Ministry, is the facilitation of participation of local forest dwellers in decision and conservation measures in the forestry sector, the monitoring and evaluation of catchment areas, the promotion of reforestation programmes, and the setting up of a policy on wildlife conservation in the country.<sup>572</sup>

The forestry and wildlife sectors are faced with many of problems which significantly affect the livelihood of the local population negatively, especially that of animal and food crop farmers, who suffer from poor productivity caused by desertification and drought. Unlawful timber exploitation and the felling of trees for household fuel are among the factors causing deforestation in Kenya. A report on the state of deforestation in Kenya, championed by the United Nations Environment Program (UNEP), the Kenya National Bureau of Statistics (KNBS) and the Kenya Forest service (KFS),<sup>573</sup> indicate a drastic loss of approximately 192 billion Kenyan Shillings per annum, due to deforestation.

Other sectors such as health, also reported spending much money on the treatment of malaria and other tropical diseases caused by deforestation.<sup>574</sup> Soil washed from degraded land by erosion is deposited in rivers and streams, which are used by the local population for household needs causing millions to fall sick.<sup>575</sup>

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<sup>571</sup> The Ministry of Forestry and Wildlife (Kenya) available at [http://www.theredddsk.org/resources/organisations/ministry\\_of\\_forestry\\_and\\_wildlife\\_k](http://www.theredddsk.org/resources/organisations/ministry_of_forestry_and_wildlife_k) (accessed on May 30, 2013).

<sup>572</sup> Ibid.

<sup>573</sup> Closing ranks to fight Poaching available at <http://webcache.googleusercontent.com/search?q=cache:http://www.forestryandwildlife> (accessed on May 30, 2013).

<sup>574</sup> Ibid.

<sup>575</sup> Ibid.

Poaching is another serious problem in the forestry and wildlife sector in Kenya. This is highlighted in the NAP, because wildlife serves as a source of foreign earning through tourism which contributes enormously to socio-economic development and poverty eradication. It is estimated that wildlife species like lion, elephant and cheetahs are among the wild life species which are near extinction as a result of poaching, and this situation has alerted the government to put in place various mechanisms to halt poaching.<sup>576</sup> The various policies and programmes in the forestry and wildlife sector will be assessed in the discussion that follows.

### 5.8.1 Development Schemes on the Tana River

The development schemes on the Tana River forest floodplain of Kenya in the north of the country comprise a policy programme which aims at protecting the land from regular floods which occurs from the river Tana. The area is undergoing serious deforestation and the loss of varieties of plant and animal species.<sup>577</sup> Thus under the Ministry of Forestry and Wildlife, the government of Kenya launched these development schemes for two principal reasons: firstly, the Tana river catchment is one of the largest river of the country with an array of social and economic activities being carried out by the local population, and, secondly the rich biodiversity of fauna and flora species have witnessed a tremendous reduction in their population due to excess flooding.<sup>578</sup> In fact, the Tana River development schemes launched action programmes long before the CCD came into existence with the aim of preventing floods causing the loss of biodiversity and affecting human health.<sup>579</sup> Health issues result from the fact that the floods carry volcanic elements from Mount Kenya and deposits downstream are consumed by the local Pokomo tribe.<sup>580</sup> Currently, the policy programme to protect the environment and land most especially around the Tana River catchment is a continuous government action, which embarks

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<sup>576</sup> Ibid at 4.

<sup>577</sup> Development Schemes on The Tana River available at <http://www.jstor.org/stable/pdfplus/635001.pdf?acceptTc=true> (accessed on May 31, 2013).

<sup>578</sup> Ibid. Also, the Tana River Catchment covers a surface area of about 94 700 kilometres square.

<sup>579</sup> M Francine and R Hughes “The Influence of Flooding Regimes on Forest Distribution and Composition in the Tana River Floodplain, Kenya” available at <http://www.jstor.org/stable/pdfplus/2404295.pdf?accept> (accessed on May 31, 2013).

<sup>580</sup> Ibid.

on the building of dams to serve as reservoirs for water when its water volume increases due to the change in climatic conditions

## 5.8.2 Wildlife Conservation Policy and Laws

The Ministry of Forestry and Wildlife in Kenya has stated that, wildlife plays an important role in the socio-economic life of the country and that resources derived from wildlife species either through tourism or from environmentally related eco-services, are key to the country's economic growth and to the poverty alleviation of its citizens.<sup>581</sup> Furthermore, Kenya has a rich wildlife diversity making it one of Africa's most attractive tourist destinations.<sup>582</sup> This fact forms the premise of this present discussion on the government policy action to implement the CCD. The policy aims to combat the poaching of wildlife species, the equitable sharing of benefits accruing from wildlife services with the local community land owners, and the settling of land disputes in nature reserves and national parks.

Among the institutions created to implement the wildlife policy in the country, is the Kenyan Wildlife Service (KWS) governed by Parliamentary Act 376.<sup>583</sup> The Act gives the institution the mandate to implement the country's wildlife policy and programmes and to relate the policies into the socio-economic and environmental needs of the country.<sup>584</sup> In accordance with the Operational Objective 2 of the Ten Year Strategic Plan which has its goal the enhancement of the Implementation of the UNCCD on the creation of a policy framework for assessing areas which require attention for the sound implementation of the Convention,<sup>585</sup> the KWS has instituted an

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<sup>581</sup> Kenya Wildlife Policy (2011) available at [http://www.kws.org/export/sites/kws/info/publications/acts\\_policies/Draft\\_Wildlife\\_Policy.pdf](http://www.kws.org/export/sites/kws/info/publications/acts_policies/Draft_Wildlife_Policy.pdf) (accessed on May 31, 2013).

<sup>582</sup> Ibid.

<sup>583</sup> Kenya Wildlife Service (hereinafter referred to as KWS) available at <http://www.kws.org> (accessed on 31 May, 2013).

<sup>584</sup> Ibid.

<sup>585</sup> The Operational Objective 2 of the Ten Year (2008-2018) to enhance the implementation of the UNCCD on Capacity –Building available at <http://www.unccd.int/Lists/SiteDocumentLibrary/10YearStrategy/Decision%20CoP8%20adoption%20> (accessed on 1 June 2013).

action programme on community wildlife conservation which seeks to engage local communities living within and outside wildlife protected areas.<sup>586</sup>

Nevertheless, Sindiga<sup>587</sup> asserts that issues of compensation in the wildlife policy are not properly dealt with as alluded in the policy. According to him, the local communities whose lands were used as protected areas received little or in most cases, no compensation leaving them landless and become poorer.

Okello contends that, as a result of the issues which remain un-settled by the Ministry of Forestry and Wildlife in the various policy programmes, human activities are detrimental to wildlife conservation.<sup>588</sup> Okello explains that wildlife species have been forced to move further away from protected areas with some being killed by the local farmers who claim their food crops are destroyed by wildlife, and complain about poor compensation.<sup>589</sup>

Finally, the policy initiated by the Kenya Wildlife Service which aims at building the capacity of the local population living close to protected areas, through participating in decisions concerning wildlife conservation falls in line with the Operational Objective 4 of the 10 Year Strategy to enhance the Implementation of the CCD.<sup>590</sup> However, the policy to involve the local population whose land is used for as protected areas to participate in capacity building and the sharing of benefits through wildlife services are not clear.<sup>591</sup> Sindiga argues that human wildlife conflicts have been promoted due to the failure to provide clearly the amount which is to be paid to local

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<sup>586</sup> The Kenya Wildlife Service Community Wildlife Programme available at [http://www.org/parks/community\\_wildlife\\_program/index.html](http://www.org/parks/community_wildlife_program/index.html) (accessed on 1 June, 2013).

<sup>587</sup> I Sindiga “Wildlife-based Tourism in Kenya: Land use Conflicts and government Compensation policies over protected areas” Available at [http://www.jcu.edu.au/business/public/groups/everyone/documents/journal\\_article/jcudev\\_012610.pdf](http://www.jcu.edu.au/business/public/groups/everyone/documents/journal_article/jcudev_012610.pdf) (accessed on 2 June, 2013) 22.

<sup>588</sup> M Makonjio Okello “Contraction of Wildlife Dispersal Area and Displacement by Human Activities in Kimana Group Ranch Near Amboseli National Park, Kenya available at <http://www.benthamscience.com/open/toconsbj/articles/V003/49TOCONSBI.pdf> (accessed on 2 June, 2013).

<sup>589</sup> Ibid at 53

<sup>590</sup> See the Ten Year Strategy (2008-2018) (n507) above on the Operational Objective 4 on Capacity –building which states that “Identify and address capacity building needs to prevent and reverse desertification/land degradation and mitigate the effects of drought”.

<sup>591</sup> See Sindiga, Wildlife –based Tourism in Kenya (n509) above at 51.

communities as participation in the sharing of benefits from wildlife services by KWS, coupled with an un-clear procedure for participating in capacity- building.<sup>592</sup>

Another issue of concern in the wildlife sector is the problem of joint water points for wildlife and livestock. According to Leeuw et al, in order to guarantee sustainable land management and in resolving the human wildlife conflict, separate water drinking points for livestock and wildlife should be put in place.<sup>593</sup> They argue that the failure of the KWS to create separate water points for livestock and wildlife has considerably facilitated the conflict and the loss of wildlife species because livestock farmers often kill wildlife claiming to be protecting livestock from wildlife.<sup>594</sup> Furthermore, they contend that land degradation in water points has become more serious because of exceeding the carrying capacity of the land.<sup>595</sup> Therefore, the provision of separate water points in the arid northern areas of the country could conserve wildlife species and go a long way in resolving the wildlife human conflicts. Thus, in doing so, it will enhance the implementation of the UNCCD in that, in the event of conflict between wildlife and humans for water resources, it is usually at the expense of the land.

The guarantee of water availability for agricultural, and for household consumption is also an aspect that is considered important by the government of Kenya in the implementation of the UNCCD. Irrigation is considered to be one of the aspects of water use which requires regulation. These issues will form the focus of the discussion in the next section.

## **5.9 The Ministry of Water and Irrigation**

The Ministry of Water and Irrigation is the legal trustee which regulates the use, management and granting of water rights to actors in the water sector. As is the case with many other countries in Africa, the scarcity of water resources is one of the problems which retard economic growth, high agricultural productivity and poverty alleviation in the country. The ministry has

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<sup>592</sup> Ibid.

<sup>593</sup> Jan de Leeuw et al “Distributing and diversity of wildlife in northern Kenya in relation to livestock and permanent water points” available at [http://www.resource-ecology.org/publ/2001\\_Leeuw.Heitkonig\\_DistributionAndDiversity](http://www.resource-ecology.org/publ/2001_Leeuw.Heitkonig_DistributionAndDiversity) (accessed on June 2, 2013).

<sup>594</sup> Ibid.

<sup>595</sup> Ibid at 8.

put in place various legal, policy regulations to implement sanitation and the guaranteed access to water resources to all citizens. The problems faced in the water sector are, the scarcity of water in poor urban and rural settlements, the un-regulated sale of water resources by unscrupulous retailers selling at higher prices than the normal tariff and poor sanitation.<sup>596</sup> The policy and legal instruments developed in an attempt to solve these problems will be discussed in the following section.

### **5.9.1 The Legal Framework of the Water Sector**

The legal framework governing water resources in Kenya is contained in various laws promulgated between 1974 and the present.<sup>597</sup> A discussion on the historical evolution of Kenya's water laws is not within the scope of this present discussion but is mentioned merely to indicate that there were laws regulating water in the country before the ratification of the UNCCD. The laws which will be discussed are the Water Act of 2002 and other water policy actions.

### **5.9.2 The Water Act, No 8 of 2002<sup>598</sup>**

The Kenya Water Act, 2002, (the Act) came into force in 2003. The Act replaced the defunct National Water Master Plan (1974) which was largely administered by government. Among the objectives of the Act, is to create a platform where other stakeholders alongside the government can ensure the availability and management of water resources for all Kenyan citizens especially the poor in urban and rural areas, who depend largely on irrigation farming due to the country's prevailing drought situation.

As mentioned above, the State is the owner of water resources in the country holding it in trust for its citizens. This provision is contained in Part Two of the Act, which further expresses that the State through the Minister of Water Affairs may delegate water rights to stakeholders in the

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<sup>596</sup> C Huggins "Water Policy and Law in a Water-Scarce Country: Implications for Smallholder Irrigation in Kenya" available at <http://publications.iwmi.org/pdf/H030844.pdf> (accessed on June 3, 2013).

<sup>597</sup> At the time of writing (June 2013).

<sup>598</sup> Act No.8 of 2002 (hereinafter referred to as the Water Act 2002).

water sector by granting a with license permit.<sup>599</sup> Thus, to guarantee the separation of powers and to involve local community participation in the management of water resources, section 7(1) of the Act institutes the Water Resources Management Authority (WRMA).<sup>600</sup> The operation of the water authority is contained in sub-section 2 of section 7 of the Act which that:

The Authority shall be a corporate body with Perpetual Succession and a Common Seal and shall have power, in and by its corporate name, to sue and be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a corporate body in furtherance of its objects.<sup>601</sup>

According to Mumma,<sup>602</sup> the Act brought in a vision which took into consideration the participation of civil society actors in the management of water resources in the country with government action referred to as, “handing over”. The present reformations put in place in the water sector to decentralize it include the local population, consisting of livestock and food crop farmers, and aim to alleviate poverty by increasing agricultural productivity, which falls in line with the requirements of the CCD for its implementation by parties. Furthermore, Mumma asserts that the guarantee of civil society organizations involvement in water management contained in section 15(5) of the Act demonstrates Kenya’s commitment to implement the Convention.<sup>603</sup> Nevertheless, there is still much government involvement in water governance, which gives little opportunity for effective local population participation in water management and thus places a burden on the rural poor.<sup>604</sup>

### **5.9.3 Policy Framework in the Water Sector in Kenya**

Various water and irrigation policies have been established in Kenya. Among these policies, the 1999 water policy document was the first of its kind which set the pace for the development of

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<sup>599</sup> Ibid Section 25(1).

<sup>600</sup> Ibid Section 7(1) The Water Resources Management Authority.

<sup>601</sup> Ibid Section 7(2). See also <http://faolex.fao.org/docs/pdf/ken37533-a.pdf> (accessed on June 3, 2013).

<sup>602</sup> A Mumma “Kenya’s New water law: an analysis of the implication of the rural poor” available at <http://projects.nri.org/waterlaw/AWLworkshop/MUMMA.A.pdf> (accessed on June 3, 2013).

<sup>603</sup> Ibid at 5.2.

<sup>604</sup> Ibid at 54.

other water and irrigation policies in the water sector.<sup>605</sup> This policy identified various areas in the country which suffered the most from the scarcity of water resources, and instituted programs to control activities around water catchments which pollute water, rendering it unsafe for consumption.<sup>606</sup> Furthermore, this policy sets up strategies for resolving water conflicts arising within the country and with its neighbours, suggesting that the various local communities create committees to manage water resources in their localities,<sup>607</sup> and stressed on the need for all development projects in the water sector to establish an environmental impact assessment.<sup>608</sup> Nevertheless, the policy has faced a number of difficulties like administrative lapses in the Ministry of Water and other related departments like agriculture, responsible for its implementation.

#### **5.9.4 Smallholders Irrigation Schemes**

The government of Kenya's reason for enacting a policy to enhance the irrigation systems of small scale farmers has become into place because about 80% of the country's citizens especially in rural areas are involved in agriculture and depend on irrigation as opposed to the rain fed agricultural practice.<sup>609</sup> Horticulture, for example, which is one of the agricultural practices, contributes enormously to the country's economy in the form of foreign earnings.<sup>610</sup>

Smallholders' irrigation schemes were established in most of the country's rural areas, especially in those areas experiencing severe drought.<sup>611</sup> The irrigation schemes were aimed at combating drought in dry land areas, increasing agricultural productivity and reducing poverty in rural areas.<sup>612</sup> Capacity building training, financial support, sensitising local farmers with regard to sustainable land management practices, and the change from the former furrow irrigation

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<sup>605</sup> See Huggins Water Policy and Law in a Water Scarce Country (n 318) above at 7.

<sup>606</sup> Ibid.

<sup>607</sup> Ibid at 8.

<sup>608</sup> Ibid.

<sup>609</sup> B.M. MATI "Capacity Development for Smallholder Irrigation in Kenya" available at [http://ec2-50-19-248-237.compute-1.amazonaws.com/738/1/IrrigAndDrain\\_57\\_3\\_332-340\\_2008.pdf](http://ec2-50-19-248-237.compute-1.amazonaws.com/738/1/IrrigAndDrain_57_3_332-340_2008.pdf) (accessed on June 5, 2013).

<sup>610</sup> Ibid at 333, in the year 2006, horticulture was the highest agricultural activity which contributed to the country's economy which stood at about 555 million US Dollars.

<sup>611</sup> Ibid at 333, some of the smallholder irrigation schemes include without limited to; the Lari-Wendani, Mukuria Kyambogo, New Mutaro, Isiolo RWUA, Mitungu, Emening and Ng' uuru Gakirwe.

<sup>612</sup> Ibid.



methods were some of the benefits provided to small farming groups.<sup>613</sup> In addition, the smallholder irrigation in Kenya has taken a bottom-up approach as recommended by the CCD for its implementation. This involves rural communities in controlling and managing water used for irrigation in a manner where individuals take the responsibility for ensuring a sustainable water management unlike a strict top to bottom approach which failed to work in the Marakwet irrigation scheme.<sup>614</sup>

Nevertheless, as Adams<sup>615</sup> argues, the various structures for managing irrigation in Kenya, both the small and large schemes have failed to meet the expectation of local indigenous rural communities because, too much government involvement in the management of the water and irrigation schemes in rural areas, has limited the effective participation of rural farmers in water management and control.<sup>616</sup> In addition, according to Adams, excessive bureaucracy in the water and irrigation sectors in Kenya, has led to the failure of the policy's fundamental objectives, which are to reduce rural poverty by increasing agricultural productivity and to ensure a sustainable land management practices.<sup>617</sup>

## 5.10 Conclusion

Within this chapter, the requirements of the Convention for what Kenya is expected to establish in its NAP have been described. What the country proposes to do in its NAP and the objectives of the NAP have also been presented. An analysis of the NAP of Kenya has been made through evaluating the various programmes carried on and guided by the different institutions, and the legislation and policies used as instruments to coordinate the implementation of NAPs. These include, the NEMA, and the Ministry of Agriculture, where different government policies aiming at implementing the Convention are established. These policies include the MVP, the Medium

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<sup>613</sup> Ibid.

<sup>614</sup> W. M. Adams et al, "Water, Rules and Gender: Water Rights in an Indigenous Irrigation System, Marakwet, Kenya" available at <http://onlinelibrary.wiley.com/doi/10.1111/1467-7660.00061/pdf> (accessed on June 5, 2013).

<sup>615</sup> W. M Adams "How beautiful is Small? Scale, Control and Successes in Kenyan Irrigation" available at <http://www.sciencedirect.com/science/article/pii/S0305750x9090112B> (accessed on June 6, 2013).

<sup>616</sup> Ibid.

<sup>617</sup> Ibid.

Term agricultural plan of action (MTP, Kenya Rural Development Strategy and the National Agriculture and Livestock Program of 2004.

Programmes in different ministerial departments such as the Ministry of Forestry and Wildlife and the National Water Master Plan, were also discussed and their policies which include the Development Schemes on the River Tana in the north of Kenya, the Wildlife Conservation Policy and the Smallholders Irrigation Schemes, which aimed at boosting agricultural productivity through a sustainable land management and reducing rural poverty among the local food crop and pastoral farming groups. Moreover, even though there are sound action programmes in the NAP of Kenya, aiming at the promotion of SLM practices and poverty eradication particularly in the rural areas experiencing severe drought and or desertification, these programmes are not working. The reasons for the failure identified in the programmes instituted in the NAP is because, firstly, there is still much government control of the programmes suggesting a top to bottom approach as opposed to the bottom up approach recommended by the UNCCD, and secondly, sensitization on the importance in implementing SLM practices by local farmers in rural communities is not effective. Thus, this makes the local farmers not to adhere to modern farming methods which promote land sustainability.

# CHAPTER SIX

## THE MOROCCAN NATIONAL ACTION PROGRAMMES

### 6.1 Introduction

This chapter will deal with what Morocco is required to do under the UNCCD, and what actions has the country proposed to institute in its NAP to implement the Convention. The analysis of these actions will be attempted through assessing the various legal and institutions as instruments to facilitate the meeting of the NAPs objectives. Thus, the reason for evaluating the implementation of the Convention in this manner is based on the reality on ground the country faces with regards to the effect of desertification and drought, and what the country gives priority to in its NAP to implement the Convention domestically. Morocco is situated in the north of Africa and is one of the countries most affected by desertification and drought in the sub-region. Morocco is bounded by Algeria in the west, by the Atlantic Ocean in the east, the Mediterranean Sea in the north and by the Sahara desert in the south.<sup>618</sup> According to the 2012 statistics on the population of Morocco, the country has a population of about 32.6 million<sup>619</sup> with the majority of the people living in rural areas and in poverty as a result of the severe drought and desertification which affects crop production and pastoral activities.<sup>620</sup>

### 6.2 State of the environment in Morocco

Land degradation, drought and desertification are a severe threat to the livelihood of the citizens of Morocco especially for the rural poor. It is estimated that about 93 per cent of the total land surface of Morocco has been seriously affected by drought, desertification and land degradation

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<sup>618</sup> World atlas: “explore Your World” available at <http://www.worldatlas.com/webimage/countrys/af> (accessed on June 5, 2013).

<sup>619</sup> Morocco Population available at <http://www.tradingeconomics.com/mor> (accessed on June 5, 2013).

<sup>620</sup> Ibid.

which are caused primarily by the felling of trees, reducing the size of the forest, un-sustainable farming practices and the degradation of cultivable agricultural land in the south by wind erosion.<sup>621</sup> Furthermore, Morocco's agricultural land has been over stocked by flocks from either pastoralists or nomads. Thus overgrazing is said to have exacerbated the present land degradation which is currently facing the country.<sup>622</sup>

### **6.3 Morocco's obligations under the UNCCD and areas of priority in its NAP**

Morocco ratified the United Nations Convention to Combat Desertification and to mitigate the Impact of Drought in 1996. The Convention obliges Morocco to establish in its NAP rural development programmes such as the provision of safe water for drinking and for other agricultural uses and the construction of farm to market roads in rural dry land areas to enable local farmers transport their produce easily to the markets in urban Centres in order to alleviate acute poverty among the rural masses.<sup>623</sup> The UNCCD also requires the Moroccan government together with civil society to institute a national body which coordinates the projects to meet the objectives of the NAP.<sup>624</sup> With regards to the objectives of the NAP of Morocco, poverty eradication and the implementation of sustainable land management practices are some the principal elements the country aims at instituting given the realities on the ground to implement the Convention.<sup>625</sup> Furthermore, it is important to note that according to statistics from the UNCCD Secretariat, in the years 1999, 2002, 2004, 2010 and 2012, Morocco submitted reports on the progress made and difficulties encountered in implementing the Convention.<sup>626</sup>

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<sup>621</sup> B Mohamed Askam Omar (Haut Commissariat aux Eaux et Forêts et à la Lutte Contre la Désertification Rabat, Morocco) English translation, the High Commission of Water and the Forests and the Fight against Desertification "Implementing National Action Programmes-the Moroccan example" available at [http://www.rural21.com/uploads/media/ELR\\_Implementin](http://www.rural21.com/uploads/media/ELR_Implementin) (accessed on June 6, 2013).

<sup>622</sup> D K. Davis "Indigenous Knowledge and the desertification debate: problematizing expert knowledge in North Africa" (2005) available at <http://www.law.tau.ac.il/Heb/Uploads/dbsAttachedFiles> (accessed on June 6, 2013).

<sup>623</sup> Programme D'action National de Lutte Contre La Désertification: Ministre de L' agriculture, du Développement Rural et des Eaux et Forêts. The English translation refers to, the National Action Programme to fight against Desertification: Ministry of Agriculture, Rural Development and of Water and Forest available at <http://www.unccd.int/ActionProgramme/Morocco> (accessed on November 28, 2013) p. 16.

<sup>624</sup> Ibid at 23.

<sup>625</sup> Ibid at 24.

<sup>626</sup> The United Nations Convention to Combat Desertification Performance Review and Assessment of Implementation System: Fourth UNCCD Reporting Cycle, 2010-2011 leg Report for Morocco available at <http://www.unccd-prais.com/Data/Reports> (accessed on November 28, 2013).

In the discussion that follows, the different action programmes and the legal, policy and provisions will be analysed as mechanisms to facilitate the objectives of the NAP in the Moroccan domestic response to the requirements to implement the Convention. Thus, institutions like the Ministry of Water and Irrigation, the Ministry of Land Tenure and Sustainable Management are some of those key institutions which play the role of coordinating the implementation of the various policies, action projects and legislation to implement the UNCCD through the NAP. The Moroccan High Commission for Waters, Forests and Combating Desertification will be dealt with first as the focal point of the NAP coordinating other projects, and subsequently other action programmes in different institutions in meeting the objectives of the National Action Programme will be evaluated.

#### **6.4 The Moroccan High Commission for Waters, Forests and Combating Desertification**

The High Commission for Waters, Forests and Combating Desertification (HCEFLCD), established in 2003, is the Moroccan focal point of its NAP, mobilizing financial resources and coordinating programmes in different institutions in the country to implement the UNCCD. The HCEFLCD is sponsored by the Global Mechanism of the Convention<sup>627</sup> which institutes strategies which are geared towards raising financial resources in Morocco for strengthening sustainable land management and the reduction of poverty in rural communities.

Among the projects on sustainable land management and poverty reduction by the Moroccan HCEFLCD and with support from the United Forest Service USFS through the US State Department, water supply from the Middle Atlas region of the country, supplying the rest of the country with about 60 per-cent of fresh water, has been improved, allowing for irrigation farming and pastoral agriculture in the predominantly grazing areas of the country.<sup>628</sup> Furthermore, in accordance with the obligation of the CCD for developed country parties to assist developing state parties with financial support and technological transfer, reports from the US Forest Service

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<sup>627</sup> The UNCCD Global Mechanism available at <http://www.global-mechanism.org/en/country-subregiona/morocco> (accessed on June 22, 2013).

<sup>628</sup> The US-Morocco Environmental Cooperation on Rangeland Management available at <http://www.State.gov/documents/organization/169357/pdf> (accessed on June 22, 2013).

International Programmes<sup>629</sup> has provided financial support to the HCEFLCD and the transfer of technology, which has reduced rangeland drought and desertification in the country significantly.<sup>630</sup>

Furthermore, the projects on the restoration of the degraded rangelands in the country by the HCEFLCD and its United States partner have gained recognition from their successes.<sup>631</sup> In addition, the projects allows for the participation of local farmer groups in dry land areas and particularly the participation of pastoralists as recommended by the CCD for its effective implementation.<sup>632</sup> However, Mohamed and Omar are of the opinion that despite efforts made, much still remains to be done to effectively combat desertification and to mitigate the impact of drought in the arid, semi-arid and dry land areas of Morocco. According to the authors, problems such as weak monitoring system on the evaluation of actions against drought and desertification and a lack of financial resources are among some of the difficulties to which attention need to be given in order to soundly implement the Convention.<sup>633</sup>

## **6.5 The Ministry of Territorial Administration Water and the Environment (MTAWE)<sup>634</sup>**

The Moroccan Ministry of Territorial Administration Water and the Environment (MTAWE) is one of those institutions which the Moroccan government has described as a coordinating unit

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<sup>629</sup> The US Forest Service International Programs available at [http://www.fs.fed.us/global/employee\\_resources/marketing/pubs/57\\_morocco\\_120418.pdf](http://www.fs.fed.us/global/employee_resources/marketing/pubs/57_morocco_120418.pdf) (accessed on June 23, 2013).

<sup>630</sup> Ibid at 2.

<sup>631</sup> Ibid.

<sup>632</sup> See (n50) article's 10 (2)f of the Convention above concerning the obligation to affected State parties to the CCD to involve pastoralists in decisions, actions and assessment of the NAPs to combat desertification, land degradation and to mitigate the impact of drought.

<sup>633</sup> See B Mohamed. A Omar (n572) above at 20.

<sup>634</sup> The Moroccan Ministry of Territorial Administration Water and the Environment (translated from the French Version).

for the management of the country's water sector. According to Ouassou et al,<sup>635</sup> water management is of vital importance in the sustainable management of land and the increase of agricultural productivity in Morocco. As a result of the fact that Morocco is a water scarce country and an economy highly dominated by pastoral agriculture, new water laws have been established since the colonial era.<sup>636</sup> Some of these laws, policies and programmes in the water sector of Morocco, which aimed at implementing the UNCCD, will form the basis of the discussion that follows.

### **6.5.1 The Legal and Policy Framework Governing the MTAW Sector**

Among the various legal and policies developed to regulate the sustainable use and management of water resources in Morocco is the 1995 Water Law which will be assessed in the discussion that follows alongside the different projects which are guided by this law.

### **6.5.2 The 1995 Water Law**

This law aims at guaranteeing the use of water resources to all Moroccan citizens and at involving all actors in the water sector such as the local farmers in the decisions which facilitate the implementation of the CCD. This law has also created the platform which has seen the establishment of different civil society organisations working in partnership with the government like the Water Users Associations (WUA)<sup>637</sup> and the Association of Water Users in the agricultural sector.<sup>638</sup>

Furthermore, the 1995 Moroccan water law is in accordance with the requirements of the European Union Framework on Water Directives (WFD),<sup>639</sup> this is because it aims at regulating the use of water resources in all the states which are members of the European Union (EU).

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<sup>635</sup> A. Ouassou et al. Morocco: "Assessment of its National Action Programmes" available at <http://www.iamz.ciheam.org/options/or> (accessed on June 10, 2013).

<sup>636</sup> Ibid at 1.

<sup>637</sup> Ibid the Water Users Associations (WUA).

<sup>638</sup> Ibid at 5, Association des Usagers de l'Eau Agricole (AUEA) the French version.

<sup>639</sup> The European Union Framework on Water Directives (hereinafter referred to as WFD) in Directive 22/12/2000 P.00010073.

Under this water law, the MTAWÉ in response to the CCD requirement to reduce rural poverty as a tool of implementing the Convention, has created stations nation-wide, ensuring safe drinking water and the digging of wells to increase water supply, and to improve the standard of living in rural communities. These programmes are coordinated by the National Office for Drinking Water.<sup>640</sup> Also, it is important to note that among other reasons, the most important reason why Morocco is using the EU framework on water approach is because of the EU-Morocco Association Agreement which Morocco is benefiting from.

Nevertheless, even though the 1995 Water Law focuses primarily on the control and the mitigation of drought which includes also the sustainable management of all the Water Basin Agencies in the country, Accorso et al<sup>641</sup> are of the opinion that it fails to provide clarity on the responsibility of different ministerial departments working alongside the MTAWÉ and that this may create conflicts of administration. The authors further explain that the 1995 Water Law may be new but in practice it is still a replica of the former colonial laws on water management, and, with the present challenges of drought and desertification facing the country, there is a need for laws which addresses the present realities.<sup>642</sup> Davis concurs with this analysis, explaining that the retention of what are in reality a continuation of the former colonial laws has created difficulties in combating desertification and the mitigating drought especially in the Aarib, the Qurzazate and the Zagora provinces which are believed to be the areas most affected by drought and desertification.<sup>643</sup> There are, however, policy and programmes created under the MTAWÉ as the Moroccan NAP to implement the CCD, which will be presented in turn in the discussion that follows.

### **6.5.3 The Project to Upgrade Drinking Water Supply in the Casablanca Coastal Area<sup>644</sup>**

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<sup>640</sup> The Moroccan National Office for Drinking Water (hereinafter referred to as ONEP), see also A. Ouassou et al. (n553) above at 8.

<sup>641</sup> Bon Accorso B et al. "Institutional and legal framework for drought Management [part 1. Components of drought Planning. 1.2 Organizational Component] available at <http://om.ciheam.org/om/pdf/b58/00800532.pdf> (accessed on June 16, 2013).

<sup>642</sup> Ibid.

<sup>643</sup> See D.K Davis Indigenous Knowledge and the desertification debate (n551) above at 7.

<sup>644</sup> The African Development Bank Group Morocco Project Appraisal Report: "Project to Upgrade Drinking Water Supply in the Casablanca Coastal Area" (2010) available at <http://www.afdb.org/fileadmin/uploads/afdb/Document> (accessed on June 14, 2013).



As a result of the severe drought conditions plaguing Morocco, access to safe water supply for domestic consumption is on the decline. It is against this backdrop that the government of Morocco was prompted to partner with the African Development Bank (ADB)<sup>645</sup> to establish the Project to Upgrade Drinking Water Supply in the Casablanca Coastal Area. The programme aims at the provision of safe drinking water to the rural and urban areas around Casablanca.<sup>646</sup> Given priority to the development of this project as the country's response to national actions to implement the Convention by fulfilling its requirements, through implementing programmes which facilitates the reduction of rural poverty and to ensure environmental protection through the adoption of sustainable land management methods, the Moroccan water supply project also fall in line with the requirement of the UNCCD. The programme has as objective, to increase the living condition of both the urban and rural population by ensuring proper sanitation, which corresponds with one of the MDGs mentioned previously.

One of the targets of this programme is to meet the demand of the growing population in Morocco to free access to safe drinking water by the year 2030. So far, the programme has set up a short term target to meet the needs of about 700 000 people in the rural areas of the country by the year 2014.<sup>647</sup> According to the ADB report for the period 2010 to 2011, the programme has been successfully driven by the so-called Water Sector Adjustment Programme which has assisted in strengthening the MTAWA regulating the water sector.<sup>648</sup> The report also states that the programme has ensured access to safe drinking water for women and children,<sup>649</sup> which falls in line with the CCD vision of fighting the gender barrier, particularly in Africa where women and children make most use of water and land but where customs restrict this group of persons from taking part in decisions on these issues.

Despite these positive aspects of the programme, research suggests that there may be a different view. According to Sherbinin and Dompka<sup>650</sup> the Moroccan 1995 Water Law, the implementation

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<sup>645</sup> The African Development Bank (hereinafter referred to as the ADB).

<sup>646</sup> See The African Development Bank (n562) above at 2.

<sup>647</sup> Ibid at 5.

<sup>648</sup> Ibid at 13.

<sup>649</sup> Ibid at 16.

<sup>650</sup> A de Sherbinin and V. Dompka "Water and Population Dynamics: Case Studies and Policy Implications" available at <http://www.aas.org/international/ehn/waterpop/front.h> (accessed on June 14, 2013).

of which is coordinated by the MTAWWE, fails to clearly state the price of safe drinking water in the absence of which, the effect is to the rural poor, who lack the financial capacity to determine their consumption by paying any price.<sup>651</sup> In addition, the authors explain that the water law does not provide for adequate environmental protection in the course of poor usage of water resources.<sup>652</sup>

To the contrary, Doukkali<sup>653</sup> argues that, there is an institutional transformation for the sustainable use of water resources in Morocco as a result of the enabling environment created by the new water law (1995 law).<sup>654</sup> Thus, a strong groundwork has been laid which has shifted the notion from what used to be a Moroccan water sector in the hands of the rich who could afford it, to an approach which engages in “promoting an economically responsive, user-oriented and allocation-based water sector.”<sup>655</sup> There is nevertheless, still much to be done to strengthen the water sector.<sup>656</sup> In particular, the CCD requires parties to involve civil society, especially those living in areas severely affected by drought, desertification or land degradation, in making decisions relating to these problems in order to implement the Convention. The discussion below focuses on civil society participation in the water sector of Morocco.

#### **6.5.4 Public Participation in the Moroccan Water Sector**

The participation of civil society in decisions concerning water management and the sustainable use of water resources is a prerequisite for the implementation of the CCD. This has been given consideration by the Moroccan government as a policy which forms its NAP to the Convention’s implementation. This policy contains different strategies and measures to bring together all actors in the water sector in the country in order to form sound participatory governance of water resources. According to a report from the United States Agency for International Development

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<sup>651</sup> Ibid.

<sup>652</sup> Ibid.

<sup>653</sup> M. Rachid Doukkali “Water institutional reforms in Morocco” (August 2004) available at <http://www.environmental-expert.com/Files%5C5302%5> (accessed on June 14, 2013).

<sup>654</sup> Ibid at 15.

<sup>655</sup> Ibid at 16.

<sup>656</sup> Ibid.

(USAID),<sup>657</sup> public participation in the Moroccan water sector has a legal foundation from the 1995 Water Law<sup>658</sup> and success has been achieved in this process through which participants from rural and the urban centers are sensitized regarding the need to use water resources sustainably in order to combat drought and desertification in their localities.<sup>659</sup> The USAID Report also states that much progress was made to promote public participation in the country water sector, especially with regards to the management of the country's ground water sources.<sup>660</sup>

The geographic location of Morocco, lying between two major water bodies,<sup>661</sup> has influenced the government to include participants and experts from other neighboring countries to share their experience in order to build their capacity to jointly take action to protect water resources to combat drought, land degradation and desertification in countries in the region. In accordance with the Moroccan government policy for access to water and the sustainable use of water resources in the country and beyond its borders, the Third International Forum in Marrakech was organized in Morocco.<sup>662</sup> Amongst the objectives of the forum was to encourage civil society participation in the water sector in countries within the region in order to effectively implement the CCD through enhancing the capacity of institutions coordinated by civil society actors.

Furthermore, according to the Secretariat of the UNCCD,<sup>663</sup> apart from the fact that Morocco is one of the member states which submitted a NAP to the Convention Secretariat, highlighting capacity building as one of its priorities to implement the Convention, capacity building through civil society participation is also in accordance to Chapter 18 of Agenda 21 which remain a

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<sup>657</sup> The United States Agency for International Development (hereinafter referred to as USAID) "Regional Water Governance Benchmarking Project: Country Profile Morocco" (October 2010) available at <http://www.waterrgovernance.org/documents/WGF/ReW> (accessed on June 16, 2013).

<sup>658</sup> Ibid at 34.

<sup>659</sup> Ibid at 40.

<sup>660</sup> Ibid.

<sup>661</sup> See World Atlas (n548) above, Morocco is bounded in the north by the Atlantic Ocean, and in the South-East by the Mediterranean Sea.

<sup>662</sup> O Varis and C Tortajada "Water Governance in the MENA Region: Policies and Institutions" available at <http://www.thirdworldcentre.org/inwentsearep.pdf> (accessed on June 16, 2013).

<sup>663</sup> The UNCCD Secretariat 2001 Report.

necessary requirement for effective Integrated Water Resource Management IWRM<sup>664</sup>. During the establishment of the Moroccan NAP to combat desertification, land degradation and to mitigate the impact of drought, consultation forums were organized in Rabat. This brought together civil society actors involved in activities affecting water and land resources to discuss how to increase the level of sensitization in rural areas regarding sustainable land management methods and the use of water resources.<sup>665</sup>

The capacity training also aimed at the raising of funds by the government of Morocco and its partners like the Conventions Global Mechanism to provide participants with the financial capacity to increase their strength in combating drought, desertification and land degradation in the country.<sup>666</sup> It is estimated that about 17 civil society groups were beneficiaries of these funds.<sup>667</sup> Another institution which coordinates the NAP of Morocco is the Ministry of Agriculture, Fisheries and the Maritime. The activities of this institution will be discussed in the next section.

## **6.6 The Ministry of Agriculture, Rural development, and Maritime Fisheries (MADRPM)**

The Moroccan Ministry of Agriculture Fisheries and Maritime (MADRPM) is one of the institutions which coordinate the laws and policies in the agriculture and fisheries sectors to implement the UNCCD. Amongst the objectives of the Ministry is to establish a platform within different ministerial departments to boost government policy and to effectively manage the agricultural sector.<sup>668</sup> The Ministry also has the responsibility for setting up measures to

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<sup>664</sup> Chapter 18 of Agenda 21. See also, E Ferragina et al. “The role of formal and informal institutions in the water sector” available at [http://planbleu.org/sites/default/files/publications/fiuggi\\_ferragina\\_eng.pdf](http://planbleu.org/sites/default/files/publications/fiuggi_ferragina_eng.pdf) (accessed on June 17, 2013) at P 9.

<sup>665</sup> The UNCCD Secretariat: Implementing the United Nations Convention to Combat Desertification in Africa “Resource Mobilization and Coordination Including Conclusion of Partnership Agreements” available at <http://www.unccd.int/Lists/SiteDocumentLibrary/Africa/tenAfricaExpr-eng.pdf> (accessed on June 16, 2013) at 26.

<sup>666</sup> Ibid at 17.

<sup>667</sup> Ibid.

<sup>668</sup> The Mission Statement of the Ministry of Agriculture, Rural development, and Maritime Fisheries available at <http://www.agriculture.gov.ma/pages/les-mission>

guarantee the availability and the rational use of water for irrigational purposes.<sup>669</sup> As in many other African countries, agriculture stands as one of the major contributors to the Moroccan economy. The sector provides employment to about 40 per cent of the country's workforce, with about 80% of those involved in agricultural activities residing in the rural areas.<sup>670</sup> Furthermore, while the farming of crops like vegetables and fruits takes place, the majority of the farming populations in Morocco, especially in rural areas, heavily practice livestock farming, with almost every household being engaged in animal husbandry.<sup>671</sup>

Different policies have been established by the Moroccan government in collaboration with civil society and other partners such as the United Nations Development Programme (UNDP), the World Health Organization (WHO) and the Food and Agricultural Organization (FAO) among others. One of the agricultural policies in the Moroccan NAP to implement the CCD is the Green Morocco Plan which will be discussed below.

### **6.6.1 The Green Morocco Plan (GMP)<sup>672</sup>**

The Green Morocco Plan (GMP) is one of the important government policy initiatives of Morocco which aims at boosting the agricultural sector and channeling development in the rural areas. The policy also aims at the introduction of modern methods in farming taking into consideration the importance of sustainable land management.<sup>673</sup> Under the MADRPM, various programmes have been established to implement the policy. Amongst these programmes, are the Agriculture and Rural Development (ARD) and the Regional Agricultural Development

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<sup>669</sup> Ibid.

<sup>670</sup> E. Azzouzi et al. "Effect of incentive policy on performance and international competitiveness of greenhouse tomatoes, Clementine mandarins, Maroc-late oranges, and olive-oil in Morocco" available at <http://www.tandfonline.com/doi/pdf/10.108/16507540701596974> (accessed on June 18, 2013).

<sup>671</sup> Ibid at 3.

<sup>672</sup> Plan Maroc Vert French version (hereinafter referred to as GMP).

<sup>673</sup> H EL BILALI et al. "Agricultural and Rural Development Governance in Morocco" available at [http://www.agrosym.unssa.rs.ba/agrosym/agrosym\\_2012/dokumenti/5\\_ruralni\\_razvoj/16\\_RD\\_Hamid\\_El\\_B](http://www.agrosym.unssa.rs.ba/agrosym/agrosym_2012/dokumenti/5_ruralni_razvoj/16_RD_Hamid_El_B) (accessed on June 18, 2013).

Authority ORMVA.<sup>674</sup> According to Bilali et al<sup>675</sup> the GMP has encouraged foreign donor organizations like the World Bank (WB), the European Investment Bank (EIB) and the Islamic Development Bank (IDB) to increase their financial support, which has facilitated the programme action in reducing rural poverty through the provision of small grants to local farming groups in rural areas.<sup>676</sup>

Nevertheless, the authors also raise concern about the level of civil society involvement in achieving the goals of the policy, which they say needs to be strengthened and to take into consideration other related environmental issues, like climate change adaptation, which has direct effects to agricultural productivity.<sup>677</sup> While the role played by women and the youth is recommended by the CCD for its implementation by African states party to the Convention, the Moroccan ORMVA has established the Tafilalet and Dades Rural Development Project as a response to the Convention's implementation, incorporating women and the youth in the fight against desertification, land degradation and mitigating the effects of drought in the country. This will be discussed below.

### **6.6.2 The Moroccan Tafilalet and Dades Rural Development Project**

The Tafilalet and Dades Rural Development Project is a project in the Ouarzazate region of Morocco involving women and young people to improve their capacity in agricultural production in order to reduce extreme poverty in the rural areas.<sup>678</sup> The project is coordinated by the ORMVA and affects an estimated population of about 178 000 people, involving women in the livestock, fisheries, crop and the agricultural transformation sectors to enhance their capacity to increase their production through sustainable land management methods.<sup>679</sup> This project is

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<sup>674</sup> Ibid.

<sup>675</sup> Ibid at 4.

<sup>676</sup> Ibid at 5.

<sup>677</sup> Ibid at 6.

<sup>678</sup> A Chtioui and M Houcini "The Moroccan Regional Agricultural Development Authority (hereinafter referred to as ORMVA): Tafilalet and Dades Rural Development Project" available at

[http://www.ifad.org/nena/studies/morocco/ma\\_356.htm](http://www.ifad.org/nena/studies/morocco/ma_356.htm) (accessed on June 19, 2013).

<sup>679</sup> Ibid.

sponsored by the International Fund for Agricultural Development Agency (IFAD)<sup>680</sup> with support from the Moroccan government, the enabling environment for capacity building training on the sustainable use of agricultural farm land and the production of dairy products to increase productivity through the creation of training Centre's for women in rural communities.<sup>681</sup>

According to Hartl,<sup>682</sup> the IFAD project, the ORMVA in the Ouarzazate region of Morocco has played a great role in strengthening the capacity of women in rural areas to engage in development activities, particularly in the water and electricity sectors, in order to reduce rural poverty among women, thereby contributing equally to men in community development.<sup>683</sup> Herzenni et al,<sup>684</sup> agree that the Tafilalet and Dades project from IFAD has supported an increase in the level of community participation in rural agricultural projects, which has seen the shift from the old traditional institutional systems commonly referred to as *jmaa* to the ORMVA institutional approach with modern methods of governance to reduce rural poverty.<sup>685</sup> Another obligation on the affected parties in the implementation of the CCD is the mobilization of financial resources through internal mechanisms which attract financial support from developed parties of the Convention.<sup>686</sup> The section in the discussion below, will present a conclusion on the Moroccan NAP to implement the CCD.

## 6.7 Conclusion

Within this chapter, the requirements of the Convention on what Morocco has to do in developing its NAP have been discussed. In addition, Morocco's proposals for its NAP and the objectives of the NAP have been analysed. The HCEFLCD, which is the body coordinating

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<sup>680</sup> The International Fund for Agricultural Development (hereinafter referred to as IFAD) Morocco was launched in 2001 and is aimed at reducing rural poverty among young women and men available at <http://operations.ifad.org/web/ifad/operations/country/home/tags/morocco> (accessed on June 19, 2013).

<sup>681</sup> Action established by IFAD for rural development through the Tafilalet and Dades Rural Development Project in Morocco available at <http://www.ifad.org/nena/action/index.htm> (accessed on June 19, 2013).

<sup>682</sup> M Hartl "Reducing Vulnerability of the Girl Child in Poor Rural Areas: Activities of the International Fund for Agricultural Development" available at <https://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ObserverPapers/IFAD%20-%20Hart> (accessed on June 20, 2013).

<sup>683</sup> Ibid at 5.

<sup>684</sup> A Herzenni et al "Institutional Options and Pastoral Communities in Morocco" available at [http://www.capri.cgiar.org/pdf/rangeland\\_morocco.pdf](http://www.capri.cgiar.org/pdf/rangeland_morocco.pdf) (accessed on June 20, 2013).

<sup>685</sup> Ibid.

<sup>686</sup> See (n6) above article 5a of the CCD.

projects in other institutions aiming at meeting the objectives of the NAP, has also been evaluated, as were the different key ministerial departments mentioned in the development of the NAP as important instruments to implement the Convention and the programmes carried out. Some of these ministries which are responsible for the facilitation of the legal, policy and programmes in meeting with the objectives of the NAP include: MTAWE. Within this ministry, the legal and policy frameworks presented in this chapter include: the 1995 Water Law in Morocco, the project to Upgrade Drinking Water Supply in the Casablanca Coastal Area and Public Participation.

Also described, were the policy actions of the MADRPM, a strategic ministry with actions, strategies and priorities adopted in the Moroccan NAPs to implement the Convention. Within the MADRPM, policy actions such as the Green Morocco Plan GMP and the Tafilalet and Dades Rural Development Projects were presented. From a consideration of the above actions which appear to be successful in meeting with the NAPs objectives, it should be accepted that more still has to be done in meeting with the Convention's objectives for implementation. This is supported by the fact that, according to the report submitted to the Convention's Secretariat,<sup>687</sup> over 77 percent of the affected dry land area occupied by local community dwellers remain the same with no significant changes recorded in reducing the drought phenomena, which shows a weakness in the actions in the NAP. In addition, the majority of people living in rural areas are still living below the poverty line, which is considered as US two dollar a day.<sup>688</sup> Also, according to the report,<sup>689</sup> rural areas have not yet been defined by Morocco, which makes it difficult to determine what project might be needed to ameliorate the living condition of the rural masses. The final conclusion, however, is that Morocco has ratified the Convention, has developed its NAP and has provided reports on its action programmes, all of which show its commitments to implement the Convention even though its NAPs are not effective enough given their present administration, in soundly meeting the objectives of the Convention.

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<sup>687</sup> See the UNCCD Report Performance Assessment (n635) above, the entire surface land area covered by dry land in Morocco is estimated at 539000 square kilometres.

<sup>688</sup> See Decision 17/COP.9 of the Convention which requires affected parties to provide reports on the proportion on citizens living below the poverty line and the status of land cover in the country. Thus, statistics show that as of 2010, the country's population stood at about 31851000 people with about 13462000 living in dry land and the rural poverty line stood at MAD 3098 available at <http://www.hcp.ma> (accessed on November 29, 2013) at p. 7.

<sup>689</sup> See (697) above.



# CHAPTER SEVEN

## CONCLUSION AND RECOMMENDATIONS

### 7.1 Introduction

The key question which this dissertation sought to address is how the UNCCD has been implemented in Africa. Thus, at the outset it was proposed that for this question to be answered two sub-questions would need to be considered.<sup>690</sup> The first is to what extent the UNCCD has been implemented, and the second sub-question is how successful the regional and sub-regional Action Plans have been working in partnership with the Convention to facilitate its implementation using the Bottom-Up-Approach adopted by the Convention. Prior to providing a conclusive answer to these questions, it is important to provide a reflection on how these questions were addressed.

### 7.2 A Brief Reflection

Chapter one of the dissertation presented an overview of the phenomenon of desertification, drought and land degradation in Africa and particularly in those countries which form the case study for this research. The concepts of desertification, drought and land degradation were also defined and an explanation, of why the phenomenon is a problem in Africa was attempted. In chapter two, focus was on providing an analysis of the Convention by looking at its substantive provisions, the Bottom-Up-Approach adopted by the Convention and the different subsidiary bodies and mechanisms, both regional and sub-regional, working to facilitate the implementation of the Convention. In addition, the various countries were chosen as case studies for the research; these include: South Africa, Cameroon, Kenya and Morocco each representing a different sub-region of Africa. It was emphasized that it is the National Action Programmes and the legal mechanisms of these selected countries on which this dissertation is primarily focused.

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<sup>690</sup> See Chapter 1 of this research above.

## **7.3 Analyses of the Convention and Its Regional and Sub-Regional Action Plans Working To Facilitate Its Implementation**

### **7.3.1 Evaluation of Performance by the UNCCD and its Subsidiary bodies**

The UNCCD objectives are to combat desertification, drought and land degradation particularly in Africa. The aim is to realize this through the implementation of sustainable land management practices and poverty eradication programmes, for which alongside, the different NAPs of parties to the Convention, institutions and mechanisms to facilitate implementation such like the Convention secretariat, the Global Environmental Fund, the Global Mechanism and NEPAD, are key stakeholders.

### **7.3.2 Financing and transfer of technology**

The transfer of technology and financing is guided by Operational Objective 5 adopted under the ten year strategy to enhance the Convention's implementation.<sup>691</sup> Thus, within the context of technological transfer in affected parties in Africa, the secretariat of the UNCCD and the Global Mechanism carried a joint working programme for two years as a work plan guided by Decision 3/COP.8 to evaluate affected country performance in Africa, and also to enhance capacity through the transfer of technology to facilitate the implementation of the Convention particularly in dry land areas in Africa.<sup>692</sup> Given the fact that the technological capacity of affected African parties to ensure for sustainable land management practices is weak, these two bodies of the Convention have successfully launched a framework instituting pilot research projects in two sub-regions of Africa.<sup>693</sup> Furthermore, the problem of inadequately trained staff on SLM in most affected African countries particularly in those selected as case studies in this research has been dealt with. This is because experts from all the other five Annexes of the Convention have been dispatched to Annex 1 affected parties, which is Africa, to train local staff in dry land areas in

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<sup>691</sup> See the two year programme of the ten year strategy (2008-2018) to enhance the implementation of the Convention's objectives guided by ICCD/COP(10), ICCD/COP(10)/12 and ICCD/COP(10)15.

<sup>692</sup> Report on the implementation of the joint work programme of the secretariat and the Global Mechanism (2010-2011) available at <http://www.unccd.int/List/officialDocuments/cop10/11.eng.pdf> (accessed on November 30, 2013).

<sup>693</sup> Ibid UNCCD secretariat and the GM pilot project in North and West Africa for technological transfer at p.7.

order for them to be fully equipped with skills to educate local farmers on best sustainable land management practices to facilitate the combat of desertification, land degradation and drought in Africa.

Furthermore with regards to financial provision to affected parties in Africa, the Convention alongside the Global Environmental Fund (GEF) as discussed above in chapter two, provides financial assistance to affected African countries to carry on projects aiming at poverty eradication and to establish SLM best practices. However, even though funding provided by the GEF has enhanced the implementation of the Convention in Africa to some extent, it has been pointed out that the funds provided to support anti desertification actions and the promotion of sustainable land management practices in Africa is relatively small compared to the financial support GEF provides to the other sister Conventions which came up at Rio.<sup>694</sup> Therefore, the insufficient funding provided to affected parties in Africa demonstrates a failure in the implementation of the Convention in Africa.

In addition, most African countries party to the Convention have raised concerns regarding the lengthy bureaucratic procedural requirement for accessing funds from the GEF which, most affected African countries, particularly those selected as case studies for this research,<sup>695</sup> are unable to meet and thus do not qualify for funding. This failure is considered also as a failure on the part of the Convention and its subsidiary bodies to facilitate the UNCCD implementation in Africa.<sup>696</sup> This is because affected parties to the Convention in Africa lack the financial capacity to sponsor SLM projects, reducing their capacity to soundly implement the Convention in their NAPs. The creation of awareness on the effects of desertification, land degradation and drought is another issue worth consideration.

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<sup>694</sup> The other two Conventions of environmental concerned which came out from Rio are; the Convention on Biological Diversity and the United Nation Framework Convention on Climate Change (hereinafter referred to as the CBD and the UNFCCC) respectively.

<sup>695</sup> Countries selected as case study to this research include; South Africa, Cameroon, Kenya and Morocco respectively.

<sup>696</sup> <sup>696</sup> See Houerou (n9) above and also (n100) above in chapter 2.

### **7.3.2 The Creation of Awareness**

The creation of awareness and information dissemination to affected countries in dry land areas in Africa, particularly the four countries selected as case studies is vital. This is because most dry land areas, especially the case study countries, rely primarily on the extraction of natural resources for their survival. Therefore creating awareness on the promotion of SLM and natural resource use enhances the fight against the phenomenon. The UNCCD has selected the seventeenth of June every year as the World Day to Combat Desertification and Drought.<sup>697</sup> This has been greatly applauded in creating awareness of the effects of desertification and drought in Africa. This is because the celebration is organized in all rural dry land areas and in schools in Africa to promote SLM practices. Furthermore, the fact that all African countries are party to the Convention shows its popularity and is a positive move towards the facilitation of its implementation. However, as presented above, the submission of reports of the NAPs of affected parties in Africa, particularly the four countries selected as case studies, at the time of writing show that implementation is slow, which could be attributed partly to the lack of government will to take actions to combat the phenomenon a priority in their countries.<sup>698</sup>

### **7.3.3 The Convention Bottom-Up-Approach for implementation**

The Bottom-Up-Approach adopted by the UNCCD is an important approach towards combating desertification and drought. This is because, as argued above, it creates a platform where grass root people in dry land areas in Africa participate in projects which aim at sustainable land management. Thus, unlike other Conventions that set rigid targets for parties to meet within a specific time frame, for example, the United Nations Framework Convention to Combat Climate Change and its Kyoto Protocol,<sup>699</sup> the UNCCD Bottom-Up-Approach largely depend on all communities in dry land areas affected by the phenomenon to take different actions in response

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<sup>697</sup> The World Day to Combat Desertification and Drought June 17 every year with the latest theme for 2013, being “Don’t let our future dry up” available at <http://www.unesco.org/news/en/enesco/events/prizes/celebration> (accessed on November 28, 2013).

<sup>698</sup> See (n135) above which statistics show that there was a decline in the submission of reports on the NAPs of affected parties in Africa.

<sup>699</sup> The United Nations Framework Convention to Combat Climate Change (hereinafter referred to as the UNFCCC) and its Kyoto Protocol launched in December 1997.

to the reality on ground to implement the Convention, without any centralized requirement. Thus, the approach of the UNCCD for its implementation is a positive approach which facilitates implementation in Africa and particularly in the case study countries selected for this research.

However, it could be concluded that the failure of the UNCCD to set specific actions for parties to take particularly in Africa in and the selected case study countries for this research slow down implementation. This is because, unlike the Kyoto Protocol of the UNFCCC, for example where Annex 1 parties<sup>700</sup> of the Convention were required to cut down their greenhouse gas (GHG) emission from 2008 to 2012 below the 1990 levels, the UNCCD fails to set up specific actions to be taken by parties<sup>701</sup> and this shows weakness in its implementation, particularly in Africa where this study is focused. Furthermore, unlike the UNFCCC and its Kyoto Protocol, where instruments such as the Clean Development Mechanism (CDM), the Joint Implementation and the Trading in Emissions,<sup>702</sup> are being used to promote flexibility and to enhance implementation of the Convention by parties, this is absent in the approach of the UNCCD which slows implementation especially in Africa, where the effects of desertification, drought and land degradation is high. Such an approach in the UNCCD could create cooperation with affected parties in Africa and those in other regions in the globe to enhance implementation. Moreover, successes of domestic experiences in the NAPs of affected parties in Africa could suggest insignificant assurance that the general implementation is assured.

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<sup>700</sup> Annex 1 parties of the Kyoto Protocol are referred to as the G-77 countries in Annex 1 of the Convention.

<sup>701</sup> The UNCCD though implemented the ten year Strategy (2008-2018) for its implementation, no specific actions are required for parties to take but instead the Convention requires affected parties in Africa in general and the case study countries to establish actions in their NAPs which contributes to poverty eradication and the promotion of sustainable land management practices.

<sup>702</sup> The UNFCCC and its Kyoto Protocol makes use of three specific instruments to facilitate implementation these include; the Joint Implementation, the Trading in Emissions and the Clean Development Mechanism. See also the Kyoto Protocol and its instruments at

[http://www.uq.edu.au/youngscholars/docs/2009/UNFCCC\\_COP\\_15\\_Topic\\_A.pdf](http://www.uq.edu.au/youngscholars/docs/2009/UNFCCC_COP_15_Topic_A.pdf) (accessed on November 28, 2013).

### **7.4.1 Analyses of the National Action Programmes of the Selected Case Study Countries**

The concluding analyses of the NAPs of the selected case study countries of this research will be in the form of making an assessment of the differences and similarities in their approach, and of the gaps identified.

### **7.4.2 Similarities in the NAPs of the selected case study countries**

The four countries selected as case studies in this dissertation, representing the sub-regions of Africa,<sup>703</sup> have developed similar National Action Programmes (NAPs) to implement the Convention. Another similarity among these selected countries is that they have all submitted the reports of the implementation of their NAPs to the UNCCD secretariat.<sup>704</sup> This shows a strong commitment to implementing the Convention. Furthermore, these countries have developed similar NAPs with projects which suggest the Bottom-Up-Approach adopted by the Convention as argued above. Among these actions are the Green Morocco Plan, the Kenyan Rural Development Strategy, the Operation Green Cameroon tree planting exercise and the Working for Water projects. These programmes, even though some are not specifically guided by any law in the NAP, are supported by their governments through financial provision. These programmes have registered successes in the work they do, which promotes sustainable land management and poverty eradication. Also, these projects are championed by inhabitants who live in dry land areas affected by desertification and drought. Thus, the similarity in the adoption of these approaches by these countries show a success in implementing the UNCCD through civil society involvement in the process. There are also some differences in the NAPs of these case study countries.

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<sup>703</sup> The selected countries are; South Africa, Cameroon, Kenya and Morocco representing the sub -regions of the African Continent.

<sup>704</sup> According to statistics from the Convention “Performance Review and Assessment of Implementation System” South Africa submitted report’s on its NAP to the secretariat in the year 1999, 2002, 2010, and 2012, Cameroon in 2000, 2004, 2006, and 2012, Kenya in 1999, 2002, 2004, and 2010 and finally Morocco in 1999, 2002, 2004, 2010, and 2012 available at <http://www.unccd-prais.com/Data/Reports> (accessed on November 28, 2013).

### **7.4.3 Differences in the NAP of the Selected Case Study Countries**

One of the reasons which could account for the differences in the approach of the NAPs of these countries could be attributed to the Convention requirement to parties. This is because the Convention, as argued above, requires every party to develop actions which link with the realities on ground that will eradicate severe poverty and the promotion of SLM practices. Thus, one of the most significant differences in the NAPs of these case study countries is that each set out actions which matches with the particular problem they face. For example, the NAP of Cameroon differs from that of South Africa in that, while much focus is accorded to reforestation in the National Action Plan of Cameroon, South Africa gives more attention to the protection of water and water catchment areas to combat the drought situation of the country by sustainably making use of water resources. On the other hand, the NAP of Kenya focuses more on the development of irrigation schemes to increase agricultural productivity, as opposed to that of Morocco, which focuses on carrying on development projects in rural areas to alleviate poverty among the masses. Therefore, it is important to note that, though some progress has been made by these selected case study countries to combat desertification, land degradation and to mitigate the impact of drought in the development of their NAPs, much still needs to be done in effectively implement the UNCCD.

Moreover, the significance of the above comparison shows that there are many differences in the approach of the selected case study countries for this research. Thus, the differences in their approach as mentioned, is as a result of the Convention's failure to set up specific actions for each party to adopt, which is the reason for the slow implementation of the Convention in Africa, and particularly to the case study countries for this research. The following paragraphs will provide recommendations for the way forward for the Convention

## 7.5 RECOMMENDATIONS

While this research has attempted to provide answers to the question posed above, it is also important to propose some recommendations which could be incorporated in the Convention and also for the development of further research in this area of study. First and foremost, it is recommended that after the ten year strategic plan of implementation of the UNCCD (2008-2018), the Convention should adopt a system whereby specific actions are defined for each of the affected parties including those in Africa on which this research is focused, taking into consideration the reality on ground with regard to the effects of desertification and drought. Thus, this approach could provide a harmonized system to evaluate implementation in the NAP of affected African countries focusing on priority actions which enhances poverty eradication and the promotion of sound sustainable land management practices without allowing for each party to determine what priority should be given to in its NAP, which might be politicized by governments of African parties affected by the phenomenon.

Secondly, there is a need for the UNCCD to create synergy with the other two sister Rio Conventions.<sup>705</sup> This is because the three Conventions (UNCCD, CBD, and UNFCCC) are all engaged in meeting the requirements of Agenda 21.<sup>706</sup> Thus, a collaborative approach could enhance implementation of the three Conventions by reducing the costs and avoiding repetitive actions. This is because, in most parties particularly in Africa, the instruments coordinating the implementation of these Conventions are different whereas their focus is similar. Hence creating synergy among them will facilitate implementation of the three. An example to show possible linkages is that, if the greenhouse gas emissions are reduced through introducing modern technologies to generate other renewable forms of energy, the pressure emitted on the forest and land and the general biodiversity loss will be reduced by providing other sustainable sources of energy. Also in the same vein similarly, when deforestation is combated, it could guarantee the

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<sup>705</sup> Three environmental Conventions were born from the Earth Summit in Rio de Janeiro in 1992.

<sup>706</sup> The United Nations Sustainable Development Agenda 21 guided by GA resolution 44/228 of December 1989 where states of the world expressed their commitment to development a new approach to combat the environmental challenges both now and in future. Thus, Agenda 21 is a document that emerged from the Earth Summit stressing for the need to link environmental conservation to developmental concerns in a sustainable fashion available at <http://www.sustainabledevelopments/Agenda21.pdf> (accessed on November 29, 2013).



preservation of carbon sinks and hence GHG emissions will reduce protecting biodiversity and preventing land degradation. Thus a collaborative approach among the above mentioned three environmental Conventions is recommended because the implementation of the UNCCD in Africa and particularly in the case study countries for this research could easily be realized.<sup>707</sup>

Finally, creating awareness of the importance of promoting sustainable land management practices in the selected case study countries is important in the implementation of the Convention. As has been argued above, the four countries chosen as case studies, just like other affected parties in Africa, have economies which depend primarily on the extraction of natural resources and land exploitation in particular. Therefore, there is a need to implement SLM programmes on local radio and television stations in local languages in order to sensitize the local communities living in dry land areas to the importance of practicing sound farming methods which do not degrade the land. This is true in that, in most rural areas in Africa in general and the case study countries in particular, rural communities oppose sustainable land management practices partly through ignorance. Thus creating awareness among these masses could be a tool to facilitate the implementation of the UNCCD in parties affected by desertification, drought and land degradation in Africa in general, and in South Africa, Cameroon, Kenya and Morocco in particular. Therefore, the application of these proposed recommendations could make a difference in ensuring for new methods, to promote and facilitate the implementation of the UNCCD in Africa.

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<sup>707</sup> See also for details on this “Interlinkages in the Rio Conventions” available at <http://www.cbd.int/cooperation/interlinkages.shtml> (accessed on November 28, 2013).

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